Chapter LXXII.

THE IMPEACHMENT AND TRIAL OF SAMUEL CHASE.

2342. The impeachment and trial of Samuel Chase, associate justice of the Supreme Court of the United States, in 1804.

The investigation of the conduct of Richard Peters, United States district judge for Pennsylvania, in 1804.

The impeachment of Mr. Justice Chase was set in motion on the responsibility of one Member of the House, sustained by the statement of another Member.

In the case of Mr. Justice Chase the House, after long debate and a review of precedents, decided to order investigation, although Members could give only hearsay evidence as to the facts.

English precedents reviewed in the Chase case on the question of ordering an investigation on the strength of common rumor.

The House declined to state by way of preamble its reason for investigating the conduct of Mr. Justice Chase and Judge Peters.

Form of resolution authorizing the Chase and Peters investigation in 1804.

Two of the seven Members of the committee for the Chase investigation were from the number opposing the investigation.

Mr. John Randolph, who had moved the Chase investigation, was made chairman of the committee.

On January 5, 1804,[1] Mr. John Randolph, of Virginia, arising in his place in the House, spoke of the necessity of "preserving unpolluted the fountain of justice," and then said:

At the last session of Congress a gentleman from Pennsylvania did, in his place (on the bill to amend the judicial system of the United States), state certain facts in relation to the official conduct of an eminent judicial character, which I then thought, and still think, the House bound to notice. But the lateness of the session (for we had, if I mistake not, scarce a fortnight remaining) precluding all possibility of bringing the subject to any efficient result, I did not then think, proper to take any steps in the business. Finding my attention, however, thus drawn to a consideration of the character of the officer in question, I made it my business, considering it my duty as well to myself as to those whom I represent, to investigate the charges then made, and the official character of the judge, in general. The result having convinced me that there exists ground of impeachment against this officer, I demand an inquiry into his conduct, and therefore submit to the House the following resolution:

"Resolved, That a committee be appointed to inquire into the official conduct of Samuel Chase, one of the associate justices of the Supreme Court of the United States, and to report their opinion whether the said Samuel Chase hath so acted in his judicial capacity as to require the interposition of the constitutional power of this House.'

Objection being made that the House should have further information before taking a step, which would cast discredit on the character of a judge, Mr. John Smilie, of Pennsylvania, who had made the statement in the preceding Congress referred to by Mr. Randolph, arose and, in the course of his remarks, said:

A man of the name of Fries was prosecuted for treason in the State of Pennsylvania. Two of the first counsel at that bar, Mr. Lewis and Mr. Dallas, without fee or reward, undertook his defense. I mention their names to show that there could have been no party prejudices that influenced them. When the trial came on the judge behaved in such a manner that Mr. Lewis declared that he would not so far degrade his profession as to plead under the circumstances imposed upon him. Mr. Dallas declared that the rights of the bar were as well established as those of the bench; that he considered the conduct of the judge as a violation of those rights and refused to plead. The facts were these: The judge told the jury and the counsel that the court had made up their minds on what constituted treason; that they had committed their opinion to writing, and that the counsel must therefore confine themselves to the facts in the cue before the court. The counsel replied that they did not dispute the facts, but that they were able to show that they did not constitute treason. The end of the affair was that the counsel retired from court, and the man was tried without counsel, convicted, and sentenced to death.

After this the Attorney-General wrote a letter to Messrs. Dallas and Lewis, requesting them to furnish their notes and opinions for the use of the President. They drew up an answer, in which they stated that the acts charged against Fries did not amount to treason, but were only sedition, and that they were so considered in the British courts. This letter was read to me by Mr. Dallas. After receiving the letter the President pardoned the man.

A lengthy debate ensued as to whether or not, upon the facts before it, the House would be justified in agreeing to the resolution. It was objected[2] that the statements of the Member from Pennsylviana, Mr. Smilie, were not entitled to much weight, since they were not what he knew himself, but only what he had received from others. Moreover, he had charged only what amounted at most to an error of judgment on the part of the judge. Some facts, it was argued[3] ought to be adduced, and so important a step should not be taken hastily. It was stated[4]

[1] First session Eighth Congress, House Journal, p. 516, Annals, pp. 805–874.

[2] By Mr. Joseph Clay, of Pennsylvania, Annals, p. 810.

[3] By Mr. Roger Griswold, of Connecticut, Annals, p. 813.

[4] By Mr. John Dennis, of Maryland, Annals, p. 814.

that the most parliamentary way would be for a gentleman to state in the form of a resolution the grounds of impeachment and then to refer such a resolution to a select committee for investigation. But it would be novel and unprecedented for the House to institute, without facts before it, an inquiry into the character of a high officer of the Government. The voting of an inquiry, so it was declared,[1] would be considered equivalent to the expression of an opinion that the House had evidence of the probable guilt of the judge. It had been urged that the House, in this case, had all the powers of a grand jury. But a grand jury had only the right to receive testimony. They might not send for it. If there was evidence in this case they might act on it, even though it be ex parte, although that would be going far. But so far there had been no statement satisfactorily showing probable cause. It was asserted[2] that the opinion of any one Member, without presentation of facts, should not avail to set in motion this proceeding. The gentleman from Pennsylvania might have misconceived the information given to him. Objection was further made[3] that the proposed form of procedure was not warranted by the precedents. The case of Bolingbroke was not in point, since that impeachment was based on disclosures made during examination of the conduct of the ministry. In the Blount and Pickering cases the Executive had transmitted documents to the House. But in this case it was proposed to appoint a committee to search in the first instance for an accusation and then to look for proofs to justify it. The assertion was made[4] that there were no precedents to justify an assertion that common fame was sufficient ground for impeachment. The precedent of the Earl of Stratford was a gloomy and terrible precedent, unsusceptible of application under a Republican form of government. It was true that a member had risen in his place in the Commons and impeached Warren Hastings, but at the same time he exhibited specific charges of misconduct. The House was the grand inquest of the nation, and its practice ought to be in many respects analogous to that of a grand jury. It should not listen to murmurs and seek for guilt. The resolution before the House did not allege a single fact. It was urged[5] that never, so far as any precedents so far cited had shown, had an inquiry been commenced in Parliament without a statement of the facts to accompany the motion, and it was objected[6] that even if common rumor had once been ground for beginning proceedings in a period of rudeness and violence, the more improved system of modem jurisprudence should discard such a doctrine.

In favor of the resolution it was urged[7] that the purpose of the inquiry was to procure evidence. If the House already had the evidence there would be no need of the inquiry. The statement of a Member in his place, even though hearsay, was sufficient to cause inquiry. It was pointed out 11 that under the rules of the House such was the respect due to a Member of the House—the statement of a Member

[1] By Mr. George W. Campbell, of Tennessee, Annals, p. 817.
[2] By Mr. Thomas Lowndes, of South Carolina, Annals, p. 825.
[3] By Mr. R. Griswold, of Connecticut, Annals, p. 837.
[4] By Mr. James Elliott, of Vermont, Annals, p. 846.
[5] By Mr. Thomas Griffin, of Virginia, Annals, p. 860.
[6] By Mr. Samuel W. Dana, of Connecticut, Annals, p. 870.
[7] By Mr. John Randolph, of Virginia, Annals, p. 811.
[8] By Mr. Smilie, of Pennsylvania, Annals, p. 821.

that he possessed information proper to be communicated to the House was sufficient to cause the doors to be closed at once; and surely the request of a Member for a committee of inquiry ought to be of equal force. It was further urged [1] that the right to move an inquiry was one of the most important pertaining to the Representative. And it was pointed out [2] that the motion to inquire should not be confounded with the motion to impeach. There was, it was urged,[3] a great difference between the inquiry and the impeachment. The analogy between the function of the House in this matter and that of a grand jury was correct and forcible. Before a grand jury it was the right of any individual to apply for and demand an inquiry into the conduct of any person within their cognizance, and it was more especially the right of any member of the jury to make such a demand. In addition to Mr. Smilie, another Member, Mr. John W. Eppes, of Virginia, stated [4] his belief that in his State a general opinion prevailed that Judge Chase had acted indecently and tyranically in a case tried there. Mr. Eppes said he was not personally present at the trial; but he related what he believed to be the facts as to the case. It was urged I that in England common report was considered sufficient authority for similar inquiries. In this case common report from Maine to Georgia condemned the conduct of the judge, not only in the case of Fries, but in the case of a grand jury in Delaware and in the case of Callender in Virginia. The general sentiment of the country condemned [6] the judge. Moreover, the Representatives of two States lately came forward and opposed his being assigned to circuits which embraced their States. This single fact ought to make an impression on the House. But in this case a Member in his place had impeached the judge, and it was not necessary to rely on common report. As to precedents for the proposed action, the impeachments of Strafford, Bolingbroke, Oxford, and Ormond, Eyres and Hastings were referred to in English history. From American history a case of proceedings against certain judges in North Carolina in 1796 was cited.[7]

In the course of the debate it was agreed by the House that Judge Richard Peters, who was associated in the case with Judge Chase, should be included in an inquiry, should one be made. This amendment was agreed to, yeas 79, nays 37.[8]

On January 7,[9] Mr. John Dennis, of Maryland, proposed an amendment to the resolution, by prefixing the following preamble:

> Whereas information has been given to the House by one of its Members, that, in a certain prosecution for treason on the part of the United States against a certain John Fries, pending in the circuit court of the United States in the State of Pennsylvania, Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, and Richard Peters, district judge for the district of Pennsylvania, by whom the said circuit court was then holden, did inform the counsel for the prisoner, that as the court

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[1] By Messrs. William Findley, of Pennsylvania, and Joseph H. Nicholson, of Maryland, Annals, pp. 826, 838.

[2] By Mr. Nicholson, Annals, p. 844.

[3] By Mr. Samuel Thatcher, of Massachusetts, Annals, pp. 861, 862.

[4] Annals, p. 863.

[5] By Mr. William Findley, Annals, p. 834.

[6] Statement by Mr. Smilie, Annals, p. 823.

[7] By Mr. James Holland, of North Carolina, Annals, p. 848.

[8] House Journal, p. 518.

[9] House Journal, p. 520; Annals, p. 874.

had formed their opinion upon the point of law, and would direct the jury thereupon, the counsel for the prisoner must confine their argument before the jury to the question of fact only; and whereas it is represented that, in consequence of such determination of the court, the counsel did refuse to address the jury on the question of fact, and the said John Fries was found guilty of treason and sentenced by the court to the punishment in such case by the laws of the United States provided, and was pardoned by the President of the United States.

It was urged in behalf of this preamble that the Journal should show the grounds for the adoption of the resolution.

Mr. Joseph H. Nicholson, of Maryland, moved to amend the proposed preamble by striking out all after the word "whereas," where it first occurred, and inserting:

Members of this House have stated in their places that they have beard certain acts of official misconduct alleged against Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, and Richard Peters, judge of the district court of the district of Pennsylvania.

A division of the motion to strike out and insert was made,[1] and on striking out there appeared yeas 79, nays 41. Then the motion to insert was agreed to without division.

Mr. Randolph and others opposed the preamble, urging that it would tend to limit the general inquiry desired.

The question being taken on the preamble as amended, it was disagreed to without a division.

The original resolution, as it had previously been amended, was then agreed to 2 as follows, the yeas being 81, the nays 40:

Resolved, That a committee be appointed to inquire into the official conduct of Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, and of Richard Peters, district judge of the district of Pennsylvania, and to report their opinion whether the said Samuel Chase and Richard Peters, or either of them, have so acted, in their judicial capacity, as to require the interposition of the constitutional power of this House.

Thereupon the committee was appointed as follows: Messrs. John Randolph, jr., of Virginia; Joseph H. Nicholson, of Maryland; Joseph Clay, of Pennsylvania; Peter Early, of Georgia; Roger Griswold, of Connecticut; Benjamin Huger, of South Carolina, and John Boyle, of Kentucky.[3]

On January 10,[4] the House passed a resolution that the committee "be authorized to send for persons and papers."

On January 30[5] Mr. J. Randolph, in the name of the committee appointed to inquire into the conduct of Samuel Chase and Richard Peters, stated that documents had been received by them which occupied a considerable bulk, the printing of which would considerably assist their investigation, by rendering them more convenient for perusal. He added that it would probably be necessary to print these papers for the information of the House when the report of the committee was made. He therefore moved the vesting in them authority to cause to be printed

[1] The rule at present does not permit such a division.

[2] House Journal, pp. 522, 523; Annals, p. 875.

[3] It is to be observed that two of the seven members of this committee represented the minority, who had opposed the investigation.

[4] House Journal, p. 525.

[5] House Journal, p. 558; Annals, p. 959.

such papers as they might conceive proper. It was objected that the printing of a part of the documents might prejudice the case in advance; but on the part of the committee it was replied that it was not necessary that the printed documents be made public until the report should be made. The motion of Mr. Randolph was then agreed to.

2343. Chase's impeachment, continued.

The report recommending the impeachment of Mr. Justice Chase was considered in Committee of the Whole House.

The investigation which resulted in the impeachment of Mr. Justice Chase was entirely ex parte.

The House found that Judge Richard Peters had not so acted as to require impeachment.

The impeachment of Mr. Justice Chase was carried to the Senate by a committee of two.

Form of declaration used by the committee in presenting the impeachment of Mr. Justice Chase in the Senate.

Verbal report made by the committee that had carried the impeachment of Mr. Justice Chase to the Senate.

Form of the resolution directing the carrying of the Chase impeachment to the Senate.

The committee appointed to prepare articles in the Chase case were all of those who had favored the impeachment.

The articles of impeachment in the Chase case were reported just before the close of the first session of the Congress.

On March 6[1] Mr. Randolph submitted the report of the committee; which was referred to a Committee of the Whole House. On March 8[2] Mr. Randolph submitted to the House an additional affidavit, which was referred also to the Committee of the Whole House.

On March 12[3] the report of the committee was taken up in Committee of the Whole House for consideration. This report was as follows:

That in consequence of the evidence collected by them, in virtue of the powers with which they have been invested by the House, and which is hereunto subjoined, they are of opinion—

1. That Samuel Chase, esq., one of the associate justices of the Supreme Court of the United States, be impeached of high crimes and misdemeanors.

2. That Richard Peters, district judge of the district of Pennsylvania, has not so acted in his judiciary capacity as to require the interposition of the constitutional powers of this House.

Accompanying this report was a volume of printed testimony. Two members of the committee, Messrs. Huger and Griswold, did not concur in the report; but as it was not the practice in the House at that time to permit minority views, their dissent appears only from the debate. Mr. Huger declared[4] that the testimony on which it was proposed to proceed was "entirely ex parte." This was not denied. Mr. Huger based his opposition to the report on this ground.

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[1] House Journal, p. 620; Annals, p. 1093.

[2] House Journal, p. 630; Annals, p. 1124.

[3] House Journal, p. 643; Annals, pp. 1171–1181.

[4] Annals, p. 1180.

The Committee of the Whole House, after considering the report, recommended the following:

Resolved, That Samuel Chase, esq., one of the associate justices of the Supreme Court of the United States, be impeached of high crimes and misdemeanors.

Resolved, That Richard Peters, district judge of the district of Pennsylvania, hath not so acted, in his judicial capacity, as to require the interposition of the constitutional power of this House.

The House agreed to the first resolution, yeas 73, nays 32. The second resolution was then agreed to without division.

Thereupon it was

Ordered, That Mr. John Randolph and Mr. Early be appointed a committee to go to the Senate, and, at the bar thereof, in the name of the House of Representatives and of all the people of the United States, to impeach Samuel Chase, one of the associate justices of the Supreme Court of the United States, of high crimes and misdemeanors; and acquaint the Senate that the House of Representatives will, in due time, exhibit particular articles of impeachment against him, and make good the same.

Ordered, That the committee do demand that the Senate take order for the appearance of the said Samuel Chase to answer to the said impeachment.

On March 13,[1] in the Senate, a message from the House of Representatives, by Messrs. J. Randolph and Early, two of their Members, was received, as follows:

Mr. President: We are ordered, in the name of the House of Representatives and of all the people of the United States, to impeach Samuel Chase, one of the associate justices of the Supreme Court of the United States, of high crimes and misdemeanors; and to acquaint the Senate that the House of Representatives will, in due time, exhibit particular articles of impeachment against him, and make good the same.

We are also ordered to demand that the Senate take order for the appearance of the said Samuel Chase to answer to the said impeachment.

On the same day,[2] in the Senate, it was ordered that the message be referred to Messrs. Abraham Baldwin, of Georgia; Joseph Anderson, of Tennessee, and William C. Nicholas, of Virginia, "to consider and report thereon."

On March 13,[3] in the House, Mr. John Randolph, from the committee appointed on the 12th instant, reported—

That, in obedience to the order of the House, the committee had been to the Senate, and in the name of the House of Representatives, and of the people of the United States, had impeached Samuel Chase, one of the associate justices of the Supreme Court of the United States, of high crimes and misdemeanors; and had acquainted the Senate that the House of Representatives will, in due time, exhibit particular articles against him and make good the same.

And further: That the committee had demanded that the Senate take order for the appearance of the said Samuel Chase to answer to the said impeachment.

On motion it was—

Resolved, That a committee be appointed to prepare and report articles of impeachment against Samuel Chase, one of the associate justices of the Supreme Court of the United States, who has been impeached by this House, during the present session, of high crimes and misdemeanors; and that the said committee have power to send for persons, papers, and records.

Ordered, That Mr. John Randolph, Mr. Nicholson, Mr. Joseph Clay, Mr. Early, and Mr. Boyle be appointed a committee, pursuant to the said resolution.

All of this committee had favored the report in favor of impeachment.

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[1] Senate Journal, p. 374; Annals, p. 271.

[2] Senate Journal, p. 375; Annals, p. 374.

[3] House Journal, p. 645; Annals, p. 1182.

On March 26[1] Mr. Randolph reported articles of impeachment, which were ordered printed. These articles do not appear in the Journal of the House.

Then, on March 27,[2] the Congress adjourned to the first Monday in November next.

2344. Chase's impeachment, continued.

The proceedings in the Chase impeachment were continued after a recess of Congress; but in deference to the practice at that time the articles were recommitted for a new report.

The articles impeaching Mr. Justice Chase were considered article by article in Committee of the Whole.

Practice in considering and amending articles of impeachment in Committee of the Whole.

The House decided to retain in the articles of the Chase impeachment the old reservation of liberty to exhibit further articles.

The articles of impeachment in the Chase case appear in the House Journal in full at the time of their adoption.

Method by which the House amended and voted on the articles of impeachment in the Chase case.

On the second day of the next session, November 6,[3] Mr. Randolph raised a question as to the status of the articles of impeachment, it being then the practice of the House that pending business should begin anew at the first of a session.[4] As a result of this inquiry the report made at the last session was referred to a select committee, composed of the same members as the select committee of the preceding session, except that Mr. John Rhea, of Tennessee, succeeded Mr. Nicholson.

On November 30,[5] Mr. Randolph, from the select committee, reported articles of impeachment, which were nearly the same as those reported at the last session, with the addition of two new articles. The articles were referred to a Committee of the Whole House. An objection was made that the committee reporting in this case had been given no power of investigation, and yet that they had reported new articles not reported by the former committee, which had expired. This objection was not considered by the House.

On December 3,[6] the report was considered in Committee of the Whole House. The articles having been read, a question arose as to procedure, especially as to amendment; and the Chairman[7] gave it as his opinion that the proper method would be to take up the report by articles. This was done accordingly.

The first article being read, a motion was made to strike it out, whereupon, the Chairman, with the approval of the committee so far as expressed, decided that, while the motion to strike out the first section of a bill would be in order, yet it seemed to him that in considering independent articles it would be preferable to

[1] House Journal, pp. 689, 690; Annals, pp. 1237–1240.

[2] House Journal, p. 696.

[3] Second session Eighth Congress, House Journal, p. 6; Annals, p. 680.

[4] The rule in this respect was modified in 1818.

[5] House Journal, p. 29; Annals, pp. 726–731.

[6] Annals, p. 728.

[7] Joseph B. Varnum, of Massachusetts, Chairman.

take the sense of the Committee of the Whole on each article on a motion to concur with the action of the select committee which had reported the articles. This method was thereupon adopted.

Thereupon the Committee of the Whole House went through the report article by article, amending, and where an article had several paragraphs, reading by paragraphs for amendment. And on each article, after an opportunity for amendment and after reading of testimony relating to it on demand of a Member, the question was put on concurring.[1] The committee decided, ayes 40, noes 50, that the testimony should not be read as a whole on each article, but only as called for by Members.

When the last article was read, Mr. James Mott, of New Jersey, moved[2] to strike out the words, declaring that the House "saved to itself the liberty of exhibiting at any time hereafter any further articles, or other accusation or impeachment against the said Samuel Chase," and further, that part which saved to the House "the right of replying to any such articles of impeachment or accusation which shall be exhibited to them." It seemed to him unfair that the House should reserve such a right to themselves. If there was anything more with which he ought to be charged, it ought to be now brought forward, and the accused should be informed at once how far they meant to go, in order to enable him the better to make his defense.

Mr. Randolph argued that these reservations had been made in the articles of the Blount and Pickering impeachments, and he did not wish to see the liberties of the people or the rights of the House abridged. Mr. Mott admitted the practice, which had been followed in his own State.

Mr. Mott's motion was disagreed to.

The last article having been concurred in, the Committee of the Whole House rose and reported the articles with amendments.

On December 4,[3] the articles were considered in the House, the Journal containing them in full as reported originally by the select committee. Each article was considered by itself, and after opportunity to amend the question was taken "that the House do agree" to the article. On the last article a division was demanded, as it contained both a charge against Judge Chase and the protestation whereby the House reserved to themselves the "liberty of exhibiting at any time hereafter any further articles." The first portion of the article was agreed to, and then the question being taken on the second portion, it was agreed to, yeas 78, nays 32. The other votes on agreeing to the several articles had ranged as follows: yeas 70 to 84, nays 34 to 45. All amendments made in Committee of the Whole had been disagreed to, and no new ones were agreed to by the House.

The question having been taken on each article, the House then voted affirmatively on the question—

That the House do concur with the select committee in their agreement to the said articles of impeachment, as originally proposed, and hereinbefore recited.

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[1] Annals, pp. 731–746.

[2] Annals, p. 743.

[3] House Journal, pp. 31–44; Annals, pp. 747–762.

2345. Chase's impeachment continued.

The House appointed seven managers, by ballot, for the trial of Mr. Justice Chase.

The managers chosen for the trial of Mr. Justice Chase had each voted for a portion, at least, of the articles.

The House overruled the Speaker and decided that a manager of an impeachment should be elected by a majority and not by a plurality.

Forms of resolutions directing the managers to exhibit in the Senate the articles of impeachment against Mr. Justice Chase.

In the Chase impeachment the message notifying the Senate that articles would be exhibited does not appear to have included the names of the managers.

The Senate notified the House of the day and hour when it would receive the managers to exhibit the articles impeaching Mr. Justice Chase.

The Senate as a court adopted a rule prescribing the ceremonies at the presentation of articles impeaching Mr. Justice Chase.

On December 5,[1] it was—

Resolved, That seven managers be appointed by ballot, to conduct the impeachment exhibited against Samuel Chase, one of the Associate Justices of the Supreme Court of the United States.

Thereupon the following were elected: Messrs. John Randolph, jr., of Virginia; Caesar A. Rodney, of Delaware; Joseph H. Nicholson, of Maryland; Peter Early, of Georgia; John Boyle, of Kentucky; Roger Nelson, of Maryland, and George W. Campbell, of Tennessee.

Each of these managers had voted for a portion or all of the articles of impeachment.

On the first ballot the six first Members on the list had each a majority of the ballots; but Mr. Campbell had only a plurality.

A question arising, the Speaker,[2] after referring to the rule of the House, "In all other cases of ballot than for committees, a majority of the votes given shall be necessary to an election," held that Mr. Campbell was duly chosen.

A question arose, and after reference to precedents, which did not seem conclusive, Mr. Randolph appealed from the decision. And the question being taken, the decision of the Speaker was overruled, ayes 25, noes 50. Thereupon a second ballot was taken, at which Mr. Campbell received a majority.

Thereupon, on motion of Mr. Nicholson, it was—

Resolved, That the articles agreed to by this House, to be exhibited in the name of themselves and of the people of the United States, against Samuel Chase, in maintenance of their impeachment against him for high crimes and misdemeanors, be carried to the Senate by the managers appointed to conduct the said impeachment.

Ordered, That a message be sent to the Senate to inform them that this House have appointed managers to conduct the impeachment against Samuel Chase, one of the associate justices of the Supreme Court of the United States, and have directed the said managers to carry to the Senate the articles agreed upon by this House to be exhibited in maintenance of their impeachment against the said Samuel Chase; and that the Clerk of this House do go with the said message.

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[1] House Journal, p. 44; Annals, pp. 762, 763.

[2] Nathaniel Macon, of North Carolina, Speaker.

On December 6[1] in the Senate the Clerk of the House delivered the message as follows:

Mr. President, I am directed to inform the Senate that the House of Representatives have appointed managers to conduct the impeachment against Samuel Chase, one of the associate justices of the Supreme Court of the United States, and have directed the said managers to carry to the Senate the articles agreed upon by the House to be exhibited in maintenance of their impeachment against the said Samuel Chase.

On December 7[2] Mr. William B. Giles, of Virginia, from a committee appointed on November 30 "to prepare and report proper rules of proceeding to be observed by the Senate in cases of impeachment," made a report, which was read. With Mr. Giles on this committee were Messrs. Abraham Baldwin, of Georgia, John Breckenridge, of Kentucky, David Stone, of North Carolina, and Israel Smith, of Vermont.

Also on December 7[3] it was—

Resolved, That the Senate will, at 1 o'clock this day, be ready to receive articles of impeachment against Samuel Chase, one of the associate justices of the Supreme Court of the United States, to be presented by the managers appointed by the House of Representatives.

Ordered, That the Secretary notify the House of Representatives accordingly.

Immediately thereafter, in the high court of impeachment,[4] it was—

Resolved, That when the managers of the impeachment shall be introduced to the bar of the Senate and shall have signified that they are ready to exhibit articles of impeachment against Samuel Chase, the President of the Senate shall direct the Sergeant-at-Arms to make proclamation, who shall, after making proclamation, repeat the following words: "All persons are commanded to keep silence, on pain of imprisonment, while the grand inquest of the nation is exhibiting to the Senate of the United States articles of impeachment against Samuel Chase, one of the associate justices of the Supreme Court of the United States." After which the articles shall be exhibited; and then the President of the Senate shall inform the managers that the Senate will take proper order on the subject of the impeachment, of which due notice shall be given to the House of Representatives.[5]

2346. Chase's impeachment continued.

The articles of impeachment of Mr. Justice Chase.

Ceremonies at the presentation of the articles before the high court of impeachment in the Chase case.

In presenting to the court the articles impeaching Mr. Justice Chase, the chairman of the managers read them and then delivered them at the table.

The managers having carried to the Senate the articles impeaching Mr. Justice Chase, reported verbally to the House.

On the same day the message from the Senate announcing its readiness to receive the articles of impeachment was received in the House,[6] and the managers

[1] Senate Journal, p. 421.

[2] Senate Journal, p. 422.

[3] Senate Journal, p. 422; Annals, p. 21.

[4] Journal of High Court of Impeachment, Senate Journal, pp. 509, 510.

[5] This is the exact form of resolution adopted on January 4, 1804, for the presentation of the articles of impeachment against Judge John Pickering. Senate Journal, Eighth Congress, pp. 494, 495.

[6] House Journal, p. 47; Annals, p. 89.

repaired at 1 o'clock to the Senate Chamber. They were admitted,[1] and Mr. Randolph, the chairman, announced that they were—

the managers instructed by the House of Representatives to exhibit certain articles of impeachment against Samuel Chase, one of the associate justices of the Supreme Court of the United States.

The managers were requested by the President to take seats assigned them within the bar, and the Sergeant-at-Arms was directed to make proclamation in the words following:

Oyes! Oyes! Oyes!
All persons are commanded to keep silence, etc. [In words as prescribed by the resolution.]

After the proclamation the managers rose, and Mr. Randolph, their chairman, read the articles of impeachment, as follows:

Articles exhibited by the House of Representatives of the United States, in the name of themselves and of all the people of the United States, against Samuel Chase, one of the associate justices of the Supreme Court of the United States, in maintenance and support of their impeachment against him for high crimes and misdemeanors.

ART. 1. That unmindful of the solemn duties of his office, and contrary to the sacred obligation by which he stood bound to discharge them, "faithfully and impartially, and without respect to persons," the said Samuel Chase, on the trial of John Fries, charged with treason, before the circuit court of the United States, held for the district of Pennsylvania, in the city of Philadelphia, during the months of April and May, one thousand eight hundred, whereat the said Samuel Chase presided, did, in his judicial capacity, conduct himself in a manner highly arbitrary, oppressive, and unjust, viz:

1. In delivering an opinion in writing, on the question of law, on the construction of which the defense of the accused materially depended, tending to prejudice the minds of the jury against the case of the said John Fries, the prisoner, before counsel had been heard in his defense;

2. In restricting the counsel for the said Fries from recurring to such English authorities as they believed apposite, or from citing certain statutes of the United States, which they deemed illustrative of the positions upon which they intended to rest the defense of their client;

3. In debarring the prisoner from his constitutional privilege of addressing the jury (through his counsel) on the law, as well as on the fact, which was to determine his guilt or innocence, and at the same time endeavoring to wrest from the jury their indisputable right to hear argument and determine upon the question of law, as well as the question of fact, involved in the verdict which they were required to give.

In consequence of which irregular conduct of the said Samuel Chase, as dangerous to our liberties as it is novel to our laws and usages, the said John Fries was deprived of the right, secured to him by the eighth article amendatory of the Constitution, and was condemned to death without having been heard by counsel, in his defense, to the disgrace of the character of the American bench, in manifest violation of law and justice, and in open contempt of the right of juries, on which ultimately rest the liberty and safety of the American people.

ART. 2. That, prompted by a similar spirit of persecution and injustice, at a circuit court of the United States, held at Richmond, in the mouth of May, 1800, for the district of Virginia, whereat the said Samuel Chase presided, and before which a certain James Thompson Callender was arraigned for a libel on John Adams, then President of the United States, the said Samuel Chase, with intent to oppress and procure the conviction of the said Callender, did overrule the objection of John Basset, one of the jury, who wished to be excused from serving on the trial, because he had made up his mind as to the publication from which the words, charged to be libelous in the indictment, were extracted; and the said Basset was accordingly sworn, and did serve on the said jury, by whose verdict the prisoner was subsequently convicted.

ART. 3. That with intent to oppress and procure the conviction of the prisoner, the evidence of John Taylor, a material witness on behalf of the aforesaid Callender, was not permitted by the said Samuel Chase to be given in, on pretense that the said witness could not prove the truth of the whole of one of the charges contained in the indictment, although the said charge embraced more than one fact.

[1] Senate Impeachment Journal, pp. 509, 510.

ART. 4. That the conduct of the said Samuel Chase was marked, during the whole course of the said trial, by manifest injustice, partiality, and intemperance, viz:

1. In compelling the prisoner's counsel to reduce to writing, and submit to the inspection of the court, for their admission or rejection, all questions which the said counsel meant to propound to the above-named John Taylor, the witness.

2. In refusing to postpone the trial, although an affidavit was regularly filed stating the absence of material witnesses on behalf of the accused; and although it was manifest that, with the utmost diligence, the attendance of such witnesses could not have been procured at that term.

3. In the use of unusual, rude, and contemptuous expressions toward the prisoner's counsel; and in falsely insinuating that they wished to excite the public fears and indignation, and to produce that insubordination to law to which the conduct of the judge did at the same time manifestly tend.

4. In repeated and vexatious interruptions of the said counsel, on the part of the said judge, which at length induced them to abandon their cause and their client, who was thereupon convicted and condemned to fine and imprisonment.

5. In an indecent solicitude, manifested by the said Samuel Chase, for the conviction of the accused, unbecoming even a public prosecutor, but highly disgraceful to the character of a judge, as it was subversive of justice.

ART. 5. And whereas it is provided by the act of Congress passed on the 24th day of September, 1786, entitled "An act to establish the judicial courts of the United States," that for any crime or offense against the United States the offender may be arrested, imprisoned, or bailed, agreeably to the usual mode of process in the State where such offender may be found; and whereas it is provided by the laws of Virginia that upon presentment by any grand jury of an offense not capital the court shall order the clerk to issue a summons against the person or persons offending to appear and answer such presentment at the next court; yet the said Samuel Chase did, at the court aforesaid, award a capias against the body of the said James Thompson Callender, indicted for an offense not capital, whereupon the said Callender was arrested and committed to close custody, contrary to law in that case made and provided.

ART. 6. And whereas it is provided by the thirty-fourth section of the aforesaid act, entitled "An act to establish the judicial courts of the United States," that the laws of the several States, except where the Constitution, treaties, or statutes of the United States shall otherwise require or provide, shall be regarded as the rules of decision in trials at common law in the courts of the United States in cases where they apply; and whereas by the laws of Virginia it is provided that in cases not capital the offender shall not be held to answer any presentment of a grand jury until the court next succeeding that during which such presentment shall have been made, yet the said Samuel Chase, with intent to oppress and procure the conviction of the said James Thompson Callender, did, at the court aforesaid, rule and adjudge the said Callender to trial during the term at which he, the said Callender, was presented and indicted, contrary to law in that case made and provided.

ART. 7. That at a circuit court of the United States for the district of Delaware, held at Newcastle, in the month of June, 1800, whereat the said Samuel Chase presided, the said Samuel Chase, disregarding the duties of his office, did descend from the dignity of a judge and stoop to the level of an informer by refusing to discharge the grand jury, although entreated by several of the said jury so to do; and after the said grand jury had regularly declared through their foreman that they had found no bills of indictment, nor had any presentments to make, by observing to the said grand jury that he, the said Samuel Chase, understood "that a highly seditious temper had manifested itself in the State of Delaware among a certain class of people, particularly in Newcastle County, and more especially in the town of Wilmington, where lived a most seditious printer, unrestrained by any principle of virtue, and regardless of social order, that the name of this printer was "—but checking himself, as if sensible of the indecorum which he was committing, added "that it might be assuming too much to mention the name of this person, but it becomes your duty, gentlemen, to inquire diligently into this matter," or words to that effect; and that with intention to procure the prosecution of the printer in question the said Samuel Chase did, moreover, authoritatively enjoin on the district attorney of the United States the necessity of procuring a file of the papers to which he alluded (and which were understood to be those published under the title of "Mirror of the Times and General Advertiser"), and, by a strict examination of them, to find some passage which might furnish the groundwork of a prosecution against the printer of the said paper,

thereby degrading his high judicial functions and tending to impair the public confidence in and respect for the tribunals of justice so essential to the general welfare.

ART. 8. And whereas mutual respect and confidence between the Government of the United States and those of the individual States, and between the people and those governments, respectively, are highly conducive to that public harmony without which there can be no public happiness, yet the said Samuel Chase, disregarding the duties and dignity of his judicial character, did, at a circuit court for the district of Maryland, held at Baltimore in the month of May, 1803, pervert his official right and duty to address the grand jury then and there assembled on the matters coming within the province of the said jury, for the purpose of delivering to the said grand jury an intemperate and inflammatory political harangue, with intent to excite the fears and resentment of the said grand jury and of the good people of Maryland against their State government and constitution, a conduct highly censurable in any, but peculiarly indecent and unbecoming in a judge of the Supreme Court of the United States; and, moreover, that the said Samuel Chase then and there, under pretense of exercising his judicial right to address the said grand jury, as aforesaid, did, in a manner highly unwarrantable, endeavor to excite the odium of the said grand jury and of the good people of Maryland against the Government of the United States by delivering opinions which, even if the judicial authority were competent to their expression on a suitable occasion and in a proper manner, were at that time, and as delivered by him, highly indecent, extrajudicial, and tending to prostitute the high judicial character with which he was invested to the low purpose of an electioneering partisan.

And the House of Representatives, by protestation, saving to themselves the liberty of exhibiting, at any time hereafter, any further articles, or other accusation or impeachment against the said Samuel Chase, and also of replying to his answers which he shall make unto the said articles, or any of them, and of offering proof to all and every the aforesaid articles, and to all and every other articles, impeachment, or accusation, which shall be exhibited by them as the case shall require, do demand that the said Samuel Chase may be put to answer the said crimes and misdemeanors, and that such proceedings, examinations, trials, and judgments may be thereupon had and given as are agreeable to law and justice.

After the reading of the articles [1] the President notified the managers that the Senate would take proper order on the subject of the impeachment, of which due notice should be given to the House of Representatives.

The managers delivered the articles of impeachment at the table and withdrew.

Thereupon the high court of impeachments adjourned.

The managers having returned to the House, Mr. Randolph, their chairman, reported [2] that they did this day carry to the Senate the articles of impeachment agreed to by this House on the 4th instant, and that the said managers were informed by the Senate that their House would take proper measures relative to the said impeachment, of which this House should be duly notified.

2347. Chase's impeachment continued.

Form prescribed for the writ of summons in the Chase impeachment.

Form of precept to be indorsed on the writ of summons in the Chase impeachment.

The Senate having fixed a day for the return of the writ of summons in the Chase impeachment, informed the House thereof.

On December 10 [3] the high court of impeachments considered the report of the committee appointed November 30 to prepare and report proper rules of proceedings, and after consideration agreed to the following:

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[1] The articles are not given in the Senate Journal (p. 510) on the day of their presentation, so the signatures of the Speaker and Clerk do not appear.

[2] House Journal, p. 47.

[3] Senate Impeachment Journal, pp. 510, 511; Annals, pp. 89, 90.

A summons shall issue, directed to the person impeached, in the form following:

"THE UNITED STATES OF AMERICA, *ss:*

"The Senate of the United States to——, greeting:

"Whereas, the House of Representatives of the United States of America did, on the ——— ——— day of ———, exhibit to the Senate articles of impeachment against you, the said, in the words following, viz: [here recite the articles] and did demand that you, the said ——— ——— should be put to answer the accusations as set forth in said articles; and that such proceedings, examinations, trials, and judgments might be thereupon had as are agreeble to law and justice: You, the said ——— ———, are therefore hereby summoned, to be and appear before the Senate of the United States of America, at their Chamber in the city of Washington, on the ——— day of ———, then and there to answer to the said articles of impeachment, and then and there to abide by, obey, and perform such orders and judgments as the Senate of the United States shall make in the premises, according to the Constitution and laws of the United States. Hereof you are not to fail.

"Witness, ——— ———, Vice-President of the United States of America and President of the Senate thereof, at the city of Washington, this ——— day of ———, in the year of our Lord ——— and of the Independence of the United States the ———."

Which summons shall be signed by the Secretary of the Senate, and sealed with their seal, and served by the Sergeant-at-Arms to the Senate, or by such other person as the Senate shall specially appoint for that purpose, who shall serve the same, pursuant to the directions given in the form next following:

A precept shall be indorsed on said writ of summons, in the form following, viz:

"UNITED STATES OF AMERICA, *ss:*

"The Senate of the United States to ———, greeting:

"You are hereby commanded to deliver to, and leave with ———, if to be found, a true and attested copy of the within writ of summons, together with a like copy of this precept, showing him both; or in case he can not with convenience be found, you are to leave true and attested copies of the said summons and precept at his usual place of residence, and in whichsoever way you perform the service let it be done at least ——— days before the appearance day mentioned in said writ of summons. Fail not, and make return of this writ of summons and precept, with your proceedings thereon indorsed, on or before the appearance day mentioned in said writ of summons.

"Witness, ——— ———, Vice-President of the United States of America and President of the Senate thereof, at the city of Washington, this —— day of ——, in the year of our Lord ——— and of the Independence of the United States the ———."

Which precept shall be signed by the Secretary of the Senate and sealed with their seal.

It was then

Resolved, That the secretary be directed to issue a summons to Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, to answer certain articles of impeachment, exhibited against him by the House of Representatives on Friday last; that the said summons be returnable the second of January next, and be served at least fifteen days before the return day thereof.

Ordered, That the secretary notify the House of Representatives of this resolution.

On the same day the message was delivered in the House,[1] and on the succeeding day was read, in form as follows:

In Senate of the United States—High Court of Impeachments, Monday, December 10, 1804.

The United States *v.* Samuel Chase.

Resolved, That the Secretary be directed to issue a summons to Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, to answer certain articles of impeachment exhibited against him by the House of Representatives, on Friday last. That the said summons be returnable the second day of January next and be served at least fifteen days before the return day thereof.

Ordered, That the Secretary carry this resolution to the House of Representatives.

Attest:

SAM. A. OTIS, *Secretary.*

Ordered, That the said proceedings of the Senate do lie on the table.

[1] House Journal, pp. 49, 50, Annals, p. 791.

On December 14,[1] in the High Court of Impeachments, "Return was made by the Sergeant-at-Arms on the summons issued."

2348. Chase's impeachment continued.

The rules agreed to by the high court of impeachment to govern the trial of Mr. Justice Chase.

On December 24[2] the High Court of Impeachments concluded its consideration of the report of the committee and the rules stood as follows:

1. Whensoever the Senate shall receive notice from the House of Representatives that managers are appointed on their part to conduct an impeachment against any person, and are directed to carry such articles to the Senate, the Secretary of the Senate shall immediately inform the House of Representatives that the Senate is ready to receive the managers for the purpose of exhibiting such articles of impeachment, agreeably to the said notice.

2. When the managers of an impeachment shall be introduced to the bar of the Senate, and shall have signified that they are ready to exhibit articles of impeachment against any person, the President of the Senate shall direct the Sergeant-at-Arms to make proclamation, who shall, after making proclamation, repeat the following words: "All persons are commanded to keep silence, on pain of imprisonment, while the grand inquest of the nation is exhibiting to the Senate of the United States articles of impeachment against ——— ———;" after which the articles shall be exhibited, and then the President of the Senate shall inform the managers that the Senate will take proper order on the subject of the impeachment, of which due notice shall be given to the House of Representatives.

3 and 4. [As adopted on December 10—Forms of summons and precept.]

5. Subpoenas shall be issued by the Secretary of the Senate, upon the application of the managers of the impeachment, or of the party impeached, or his counsel, in the following form, to wit:

To ——— ———, greeting:

"You, and each of you, are hereby commanded to appear before the Senate of the United States, on the ——— day of ———, at the Senate Chamber, in the city of Washington, then and there to testify your knowledge in the cause which is before the Senate, in which the House of Representatives have impeached ——— ———. Fail not.

"Witness, ——— ———, Vice-President of the United States of America and President of the Senate thereof, at the city of Washington, this ——— day of ———, in the year of our Lord ——— and of the Independence of the United States the ———."

Which shall be signed by the Secretary of the Senate and sealed with their seal.

Which subpoenas shall be directed, in every case, to the marshal of the district where such witnesses respectively reside, to serve and return.

6. The form of direction to the marshal, for the service of the subpoena, shall be as follows:

"The Senate of the United States of America to the Marshal of the District of ———:

"You are hereby commanded to serve and return the within subpoena, according to law.

"Dated at Washington, this ——— day of ———, in the year of our Lord—and of the Independence of the United States the ———.

——— ———,

"Secretary of the Senate."

7. That the President of the Senate shall direct all necessary preparations in the Senate Chamber, and all the forms of proceeding, while the Senate are sitting for the purpose of trying an impeachment, and all forms during the trial not otherwise specially provided for by the Senate.

8. He shall also be authorized to direct the employment of the marshal of the District of Columbia, or any other person or persons, during the trial, to discharge such duties as may be prescribed by him.

9. At 12 o'clock of the day appointed for the return of the summons against the person impeached the legislative and executive business of the Senate shall be suspended, and the Secretary of the Senate shall administer an oath to the returning officer, in the form following, viz: "I, ——— ———, do solemnly swear that the return made and subscribed by me, upon the process issued on the ——— day of ———, by

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[1] Senate Impeachment Journal, p. 511.

[2] Senate Impeachment Journal, pp. 511–513, Annals pp. 89–92.

the Senate of the United States, against ——— ———, is truly made, and that I have performed said services as therein described. So help me God." Which oath shall be entered at large on the records.

10. The person impeached shall then be called to appear and answer the articles of impeachment exhibited against him. If he appears, or any person for him, the appearance shall be recorded, stating particularly if by himself or if by agent or attorney, naming the person appearing and the capacity in which he appears.

11. At 12 o'clock of the day appointed for the trial of an impeachment the legislative and executive business of the Senate shall be postponed. The Secretary shall then administer the following oath or affirmation to the President:

"You solemnly swear, or affirm, that in all things appertaining to the trial of the impeachment of ——— ———, you will do impartial justice according to the Constitution and laws of the United States."

12. And the President shall administer the said oath or affirmation to each Senator present.

The Secretary shall then give notice to the House of Representatives that the Senate is ready to proceed upon the impeachment of ——— ———, in the Senate Chamber, which Chamber is prepared with accommodations for the reception of the House of Representatives.

13. Counsel for the parties shall be admitted to appear, and be heard upon an impeachment.

14. All motions made by the parties or their counsel shall be addressed to the President of the Senate, and if he shall require it, shall be committed to writing, and read at the Secretary's table; and all decisions shall be had by yeas and nays, and without debate, which shall be entered on the records.

15. Witnesses shall be sworn in the following form, to wit: "You, ——— ———, do swear (or affirm, as the case may be) that the evidence you shall give in the case now depending between the United States and ——— ———, shall be the truth, the whole truth, and nothing but the truth. So help you God." Which oath shall be administered by the Secretary.

16. Witnesses shall be examined by the party producing them, and then cross-examined in the usual form.

17. If a Senator is called as a witness, he shall be sworn, and give his testimony, standing in his place.

18. If a Senator wishes a question to be put to a witness, it shall be reduced to writing and put by the President.

19. At all times, whilst the Senate is sitting upon the trial of an impeachment, the doors of the Senate Chamber shall be kept open.

The nineteenth rule was agreed to on December 31.[1]

2349. Chase's impeachment continued.

Form of return made and oath taken by the Sergeant-at-Arms in the Chase impeachment.

Mr. Justice Chase appeared to answer the articles of impeachment "in his own proper person."

On his appearance to answer articles of impeachment Mr. Justice Chase was furnished with a chair.

Mr. Justice Chase, in appearing, was permitted by the Vice-President, without objection of the Senate, to read a paper giving reasons for delaying his answer.

Mr. Justice Chase, in asking time to prepare his answer to the articles, was called to order by the Vice-President for expressions used.

It was decided that members of the court should be sworn before considering respondent's motion for time to answer in the Chase case.

Mr. Justice Chase's application for a time to answer was accompanied by a sworn statement of reasons.

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[1] Senate impeachment, Journal, pp. 513, 514.

The Senate having fixed the day for Mr. Justice Chase to file his answer, informed the House that the trial would proceed on that day.

Neither the managers nor the House attended on the appearance of Mr. Justice Chase in answer to the summons.

On January 2, 1805,[1] the high court of impeachment having been opened by proclamation, the return made by the Sergeant-at-Arms was read, as follows:

I, James Mathers, Sergeant-at-Arms to the Senate of the United States, in obedience to the within summons to me directed, did proceed to the residence of the within-named Samuel Chase, on the 12th day of December, 1804, and did then and there leave a true copy of the said writ of summons, together with a true copy of the articles of impeachment annexed, with him, the said Samuel Chase.

JAMES MATHERS.

After which the Secretary administered to him the oath, as follows:

You, James Mathers, Sergeant-at-Arms to the Senate of the United States, do solemnly swear that the return made and subscribed by you upon the process issued on the 10th day of December last, by the Senate of the United States, against Samuel Chase, one of the Associate Justices of the Supreme Court, is truly made, and that you have performed said services as therein described. So help you God.

Samuel Chase was then solemnly called,[2] who appeared "in his own proper person."

The President of the Senate[3] informed him that the Senate was ready to receive any answer that he had to make.[4]

Mr. Chase requested the indulgence of a chair, which was immediately furnished. The report of the trial intimates that in accordance with the parliamentary practice of England no chair was assigned to him previously to his appearance, but that an informal intimation was made to him that, on his request, it would be furnished.

After being seated for a short time Judge Chase rose and commenced reading from a paper which he held in his hand.

After reading far enough to show that the paper was proceeding in general denial of the charges, the President reminded him that this was the day appointed to receive any answer he might make to the articles of impeachment. Thereupon Judge Chase said it was his purpose to request the allowance of further time to put in his answer.

The reading was then proceeding, when the President interrupted and asked if the paper was intended as his answer. If so, it would be put on file. If it was a prelude to a motion he meant to make praying to be allowed further time for putting, in his answer, he would confine himself strictly to what had relation to that object.

Judge Chase said it was not his answer that he was reading, but that he was

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[1] Senate impeachment, Journal, p. 514.

[2] The form of this call is not given, but in the Blount trial it was as follows: "Hear ye! Hear ye! Hear ye! William Blount, late a Senator from the State of Tennessee, come forward and answer the articles of impeachment against you by the House of Representatives." Senate Journals, Sixth, Seventh, and Eighth Congresses, p. 486.

[3] Aaron Burr, of New York, Vice-President, and President of the Senate.

[4] Annals, pp. 92–98.

assigning reasons why he could not now answer, in order to show that he was entitled to further time to prepare and put in his answer.

The President replied:

You, who are so conversant in the practice of courts of law, know very well that a motion for time must not be founded on mere suggestions, but must be founded on some facts to prove the propriety of the motion.

Judge Chase said he meant to show the impracticability of his answering at this time, from the articles themselves, and it was for that purpose that he made an allusion to them.

The President said that with the caution he had given he might proceed, provided no objection were made by any gentleman of the Senate.

Judge Chase proceeded in his address.

Later in the reading the following paragraph occurred:

And acrimonious as are the terms in which many of the accusations are conceived; harsh and opprobrious as are the epithets wherewith it has been thought proper to assail my name and character, by those who were *"puling in their nurses' arms" whilst I was contributing my utmost aid to lay the groundwork of American liberty*, I yet thank my accusers, whose functions as members of the Government of my country I highly respect, for having at length put their charges into a definitive form, susceptible of refutation; and for having thereby afforded me an opportunity of vindicating my innocence, in the face of this honorable court, of my country, and of the world.

On using the expressions marked in *italics*,

The President interrupted Judge Chase and said that observations of censure or recrimination were not admissible; it would be very improper for him to listen to observations on the statements of the House of Representatives before an answer was filed.

Judge Chase said he had very few words more to add, which would conclude what he had to say at the present time.

With the permission of the President he proceeded.

The address being concluded, the President requested him to reduce to writing any motion which he wished to make.

Thereupon Judge Chase submitted the following:

I solicit this honorable court to allow me until the first day of the next session to put in my answer and prepare for my trial.

The President informed Mr. Chase that the court would take time to consider the motion.

During these proceedings incident to the return on the summons and the appearance of Judge Chase, neither the House of Representatives nor its managers were present.

After Judge Chase had submitted his motion the Senate withdrew to a private apartment, where debate arose as to whether or not the Senators should take the oath required by the Constitution before they took into consideration the motion of Judge Chase; and at the conclusion of the debate it was

Resolved, That on the meeting of the Senate to-morrow, before they proceed to any business on the articles of impeachment before them, and before the decision of any question, the oath prescribed by the rules shall be administered to the President and Members of the Senate.

On January 3[1] the high court of impeachments was duly opened with proclamation, and the oath was administered to the President and Senators in the manner prescribed by the rule.

Thereupon the President stated that he had received a letter from the defendant, inclosing an affidavit that further time was necessary for him to prepare for trial; which affidavit[2] was read, as follows:

City of Washington, ss:

Samuel Chase made oath on the Holy Evangels of Almighty God, that it is not in his power to obtain information respecting the facts alleged in the articles of impeachment to have taken place in the city of Philadelphia in the trial of John Fries; or of the facts alleged to have taken place in the city of Richmond in the trial of James T. Callender, in time to prepare and put in his answer, and to proceed to trial, with any probability that the same could be finished on or before the 5th day of March next. And, further, that it is not in his power to procure information of the names of the witnesses, whom he think it may be proper and necessary for him to summon, in time to obtain their attendance, if his answer could be prepared in time sufficient for the finishing of the said trial, before the said 5th day of March next; and the said Samuel Chase further made oath that he believes it will not be in his power to obtain the advice of counsel, to prepare his answer, and to give him their assistance on the trial, which he thinks necessary, if the said trial should take place during the present session of Congress; and that he verily believes, if he had at this time full information of facts, and of the witnesses proper for him to summon, and if he had also the assistance of counsel, that he could not prepare the answer he thinks he ought to put in, and be ready for his trial, within the space of four or five weeks from this time. And, further, that his application to the honorable the Senate, for time to obtain the information of facts, in order to prepare his answer, and for time to procure the attendance of necessary witnesses, and to prepare for his defense in the trial, and to obtain the advice and assistance of counsel, is not made for the purpose of delay, but only for the purpose of obtaining a full hearing of the articles of impeachment against him in their real merits.

SAMUEL CHASE.

Sworn to this 3d day of January, 1805, before

SAMUEL HAMILTON.

Whereupon the following motion was made by Mr. Stephen R. Bradley, of Vermont:

Ordered, That Samuel Chase file his answer, with the Secretary of the Senate, to the several articles of impeachment exhibited against him, by the House of Representatives, on or before the ——— day ———.

A motion was made by Mr. William B. Giles, of Virginia, to amend the motion and to strike out all that follows the word *"Ordered,"* and insert "That ——— next shall be the day for receiving the answer, and proceeding on the trial of the impeachment against Samuel Chase.

The motion to strike out was agreed to, yeas 20, nays 10. And then the motion to insert was also agreed to, yeas 22, nays 8.

The motion to fill the blank with the words "first Monday of December next" was disagreed to, yeas 12, nays 18. Then a motion to insert "the fourth day of February next" was agreed to, yeas 22, nays 8. Then the resolution as amended was agreed to, yeas 21, nays 9.

It was then

Ordered, That the Secretary notify the House of Representatives and the said Samuel Chase thereof.

Thereupon the high court of impeachments adjourned.

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[1] Senate impeachment, Journal, pp. 514, 515; Annals, pp. 98–100.

[2] This affidavit does not appear in full in the Journal of the high court of impeachments.

On January 4[1] the House was informed by message, which was read in form, as follows:

In Senate of the United States—High court of impeachments, January 3, 1805.

United States *v.* Samuel Chase.

Ordered, That the 4th day of February next shall be the day for receiving the answer, and proceeding on the trial of the impeachment against Samuel Chase, one of the Associate Justices of the Supreme Court of the United States.

Attest:

SAM A. OTIS, *Secretary.*

Ordered, That the said proceedings of the Senate do lie on the table.

2350. Chase's impeachment continued.

A Manager of the Chase impeachment being excused, the House chose another by ballot and informed the Senate thereof.

The House determined to attend as a Committee of the Whole the proceedings of the trial of Mr. Justice Chase.

On January 25,[2] in the House—

Resolved, That Mr. Nelson be excused from serving as one of the Managers appointed on the 5th ultimo, on the part of this House, to conduct the impeachment against Samuel Chase, one of the Associate Justices of the Supreme Court of the United States.

On January 28[3] the House elected by ballot Mr. Christopher Clark, of Virginia, to succeed Mr. Nelson, and informed the Senate thereof by message, delivered as follows by the Clerk:

Mr. President, I am directed to acquaint the Senate that the House of Representatives have elected Mr. Clark a manager to conduct the impeachment against Samuel Chase, one of the associate justices of the Supreme Court of the United States, in the place of Mr. Nelson, who hath been excused that service.

Mr. Clark had voted in favor of all of the articles of impeachment save one, which he had voted against.

On February 4,[4] in the House, it was

Resolved, That, during the trial of the impeachment now depending before the Senate, this House will attend, at 10 o'clock in the forenoon, and proceed on the legislative business before the House until the hour at which the Senate shall appoint each day to proceed on the trial of the impeachment now pending before that body, and that the House then resolve itself into a Committee of the Whole and attend the said trial.

2351. Chase's impeachment continued.

Attendance of the House in Committee of the Whole at the ceremonies of the beginning of Chase's trial.

Description of the arrangement of the Senate chamber for the Chase trial.

Mr. Justice Chase introduced his counsel at the time he gave in his answer.

The Senate granted the request of Mr. Justice Chase for permission to read his answer by himself and counsel.

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[1] House Journal, p. 78; Annals, p. 872.

[2] House Journal, p. 105; Annals, p. 1011.

[3] House Journal, p. 108: Senate Journal, pp. 442, 516.

[4] House Journal, p. 118; Annals, p. 1174.

The answer of Mr. Justice Chase to the articles of impeachment.

The answer of the respondent in the Chase trial does not appear in the journal of the court.

On request of the managers the Senate directed its Secretary to carry to the House an attested copy of Mr. Justice Chase's answer.

The answer of Mr. Justice Chase being received in the House was referred to the managers.

Form of proceedings when the House attends an impeachment trial as Committee of the Whole.

On the same day,[1] the high court of impeachments was duly opened with proclamation, and it was then—

Ordered, That the Secretary give notice to the House of Representatives that the Senate are in their public Chamber and are ready to proceed on the trial of Samuel Chase; and that seats are provided for the accommodation of the Members.

This message being received in the House,[2] that body resolved itself into a Committee of the Whole House, with Mr. Joseph B. Varnum, of Massachusetts, as Chairman, and proceeded to the Senate Chamber with the managers. Soon after they entered the Chamber and took their seats.

The Senate Chamber was fitted up in a style of appropriate elegance. Benches covered with crimson, on each side, and in a line with the chair of the President, were assigned to the Members of the Senate. On the right and in front of the chair, a box was assigned to the managers, and on the left a similar box to Mr. Chase and his counsel, and chairs allotted to such friends as he might introduce. The residue of the floor was occupied with chairs for the accommodation of the Members of the House of Representatives, and with boxes for the reception of the foreign ministers, and civil and military officers of the United States. On the right and left of the Chair, at the termination of the benches of the members of the court, boxes were assigned to stenographers. The permanent gallery was allotted to the indiscriminate admission of spectators. Below this gallery and above the floor of the House a new gallery was raised and fitted up with peculiar elegance, intended primarily for the exclusive accommodation of ladies. But this feature of the arrangement, made by the Vice-President, was at an early period of the trial abandoned, it having been found impracticable. At the termination of this gallery, on each side, boxes were specially assigned to ladies attached to the families of public personages. The preservation of order was devolved on the marshal of the District of Columbia, who was assisted by a number of deputies.[3]

Samuel Chase being called to make answer to the articles of impeachment exhibited against him by the House of Representatives, appeared and requested that Robert G. Harper, Luther Martin, Philip B. Key, and Joseph Hopkinson, esqs., might be admitted and considered as counsel for him, the said Samuel Chase, and thereupon submitted a motion, which was read at the table as follows:

Samuel Chase moves for permission to read his answer, by himself and his counsel, at the bar of this honorable court.

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[1] Senate Impeachment Journal, p. 516; Annals, p. 101.

[2] House Journal, p. 119.

[3] Annals, p. 100.

The President asked him if it was the answer on which he meant to rely? To which he replied in the affirmative.

The question being taken on the motion, it passed in the affirmative.

Then Judge Chase began the reading of his answer, and before its conclusion was assisted by Messrs. Harper and Hopkinson. The answer began as follows: [1]

This respondent, in his proper person, comes into the said court, and protesting that there is no high crime or misdemeanor particularly alleged in the said articles of impeachment to which he is or can be bound by law to make answer, and saving to himself now, and at all times hereafter, all benefit of exception to the insufficiency of the said articles, and each of them, and to the defects therein appearing in point of law or otherwise, and protesting also that he ought not to be injured in any manner, by any words, or by any want of form in this his answer, he submits the following facts and observations by way of answer to the said articles.

The answer then proceeds to answer the charges, article by article.

At the conclusion of the reading, Mr. Randolph, chairman of the managers, moved that they have time to consult the House of Representatives on a replication, and that they be furnished with a copy of the answer.

To this the President replied that the motion would be taken into consideration and the House of Representatives should be notified of the result.

Thereupon the high court of impeachments adjourned and the Members of the House of Representatives returned to their Hall, and the Committee of the Whole House rose and their Chairman reported.[2]

On February 5,[3] in the high court of impeachments—

Ordered, That the Secretary carry to the House of Representatives an attested copy of the answer of Samuel Chase, one of the associate justices of the Supreme Court, to articles of impeachment against him by the House of Representatives.

The message being delivered in the House the same day,[4] the copy of the answer was read and ordered to be referred to the managers.

2352. Chase's impeachment continued.

The replication of the House to the answer of Mr. Justice Chase to the articles of impeachment.

In the Chase case the House refused to strike from its replication certain words reflecting on the motives of the respondent.

Forms of resolutions relating to the adoption of the replication in the Chase case and the carrying thereof to the Senate.

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[1] Annals, pp. 101–150. The Journal of the Court of Impeachments does not have the answer; and prints the articles only as they are voted on.

[2] The Journal of the House has the following entry, showing the form used while the trial progressed:

"The House then, in pursuance of a resolution agreed to this day, resolved itself into a Committee of the Whole House, and proceeded in that capacity to the Senate Chamber to attend the trial by the Senate of the impeachment against Samuel Chase, one of the associate justices of the Supreme Court of the United States; and, after some time spent therein, the committee returned into the Chamber of the House, and Mr. Speaker having resumed the chair, Mr. Varnum, from the said Committee of the Whole, reported that the committee had, according to order, attended the trial by the Senate of the said impeachment, and that some progress had been made therein." (House Journal, p. 119.)

[3] Senate Impeachment Journal, p. 516.

[4] House Journal, pp. 123, 124; Annals, pp. 1181–1184.

The replication in the Chase impeachment was signed by the Speaker and attested by the Clerk.

The replication in the Chase case was read to the Senate by the chairman of the managers.

Counsel for respondent were furnished a copy of the House's replication by direction of the Presiding Officer.

Later, on the same day, Mr. Randolph, chairman of the managers, submitted to the House the following report:

That they have considered the said answer, and do find that the said Samuel Chase has endeavored to cover the crimes and misdemeanors laid to his charge by evasive insinuations and misrepresentation of facts; and that the said answer does give a gloss and coloring, utterly false and untrue, to the various criminal matters contained in the said articles; and do submit to the judgment of the House their opinion that, for avoiding any imputation of delay to the House of Representatives, in a case of so great moment, a replication be forthwith sent to the Senate, maintaining the charge of this House; and that the committee had prepared a replication accordingly, which they herewith report to the House, as follows:

"The House of Representatives of the United States have considered the answer of Samuel Chase, one of the associate justices of the Supreme Court of the United States, to the articles of impeachment against him by them exhibited, in the name of themselves and of all the people of the United States; and observe—

"That the said Samuel Chase has endeavored to cover the high crimes and misdemeanors laid to his charge by evasive insinuations and misrepresentation of facts; that the answer does give a gloss and coloring, utterly false and untrue, to the various criminal matters contained in the said articles; that the said Samuel Chase did, in fact, commit the numerous acts of oppression, persecution, and injustice of which he stands accused; and the House of Representatives, in full confidence of the truth and justice of their accusation and of the necessity of bringing the said Samuel Chase to a speedy and exemplary punishment, and not doubting that the Senate will use all becoming diligence to do justice to the proceedings of the House of Representatives, and to vindicate the honor of the nation, do aver their charge against the said Samuel Chase to be true; and that the said Samuel Chase is guilty in such manner as he stands impeached; and that the House of Representatives will be ready to prove their charges against him, at such convenient time and place as shall be appointed for that purpose."

Mr. Roger Griswold, of Connecticut, moved that the report be committed to a Committee of the Whole House, which motion was disagreed to.

Mr. John Dennis, of Maryland, moved to amend the replication by striking out therefrom after the words "and observe," the following words:

That the said Samuel Chase has endeavored to cover the high crimes and misdemeanors laid to his charge by evasive insinuations and misrepresentation of facts; that the said answer does give a gloss and coloring, utterly false and untrue, to the various criminal matters contained in the said articles.

This amendment was disagreed to, yeas 41, nays 70.

Then the question being taken that the House do agree to the said replication, it passed in the affirmative, yeas 77, nays 34.

Thereupon, it was

Resolved, That the replication annexed to the report of the managers be put into the answer and pleas of the aforesaid Samuel Chase, on behalf of this House; and that the managers be instructed to proceed to maintain the said replication at the bar of the Senate, at such time as shall be appointed by the Senate.

Ordered, That a message be sent to the Senate to inform them that this House have agreed to a replication, on their part, to the answer of Samuel Chase, one of the associate justices of the Supreme Court of the United States, to the articles of impeachment exhibited to the Senate against him by this

House, and have directed the managers appointed to conduct the said impeachment to carry the said replication to the Senate; and to proceed to maintain the same at the bar of the Senate, at such time as shall be appointed by the Senate.

On February 7, 1805,[1] in the high court of impeachments, the Clerk of the House delivered the message, as above directed.

Then it was

Ordered, That the Secretary inform the House of Representatives that the Senate will be ready to proceed on the trial of the impeachment of Samuel Chase, one of the associate justices of the Supreme Court, at half past 2 o'clock this day.

The high court of impeachments being duly opened at 2 o'clock the managers attended, and the replication was read by Mr. Randolph, in the form given above, with the following attestation:

Signed by order and in behalf of the said House.

NATH. MACON, *Speaker.*

Attest:

JOHN BECKLEY, *Clerk.*

Mr. Hopkinson requested a copy of the replication, which, the President replied, would be furnished by the Secretary.

Mr. Breckenridge moved a resolution to the following effect:

That the Secretary be directed to inform the House of Representatives that the Senate will, tomorrow, at 12 o'clock, proceed with the trial of Samuel Chase;

which was agreed to without one dissenting voice, 34 members voting for it.

Whereupon the Senate withdrew to their legislative apartment.

2353. Chase's impeachment continued.

The answer and replication being filed in the Chase impeachment, the court proceeded to hear testimony.

Proclamation made by the Sergeant-at-Arms at the opening of the Chase trial for presentation of evidence.

Witnesses on both sides were called at the opening of the Chase trial.

The managers not being ready to present testimony at the opening of the Chase trial, the court granted their motion to postpone.

On February 8[2] the high court of impeachments having met, it was

Ordered, That the Secretary notify the House of Representatives that the Senate are ready to proceed further on the trial of the impeachment of Samuel Chase, one of the associate justices of the Supreme Court.

The managers, accompanied by the House of Representatives in Committee of the Whole House, accordingly attended.

Samuel Chase, the respondent, attended with his counsel.

Proclamation was made to keep silence, and also as follows:

Oyes! Oyes! Oyes!

Whereas a charge of high crimes and misdemeanors hath been exhibited by the House of Representatives of the United States, in the name of themselves and of all the people of the United States, against Samuel Chase, one of the associate justices of the Supreme Court, all persons concerned are to take notice that he now stands upon his trial, and they may come forth in order to make good the said charge.

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[1] Senate Impeachment Journal, p. 516.

[2] Senate Impeachment Journal, p. 517; Annals, p. 152.

The President informed the managers that they were at liberty to proceed in support of the articles of impeachment exhibited.

On request of Mr. Randolph the witnesses on behalf of the managers were called.

On request of Mr. Hopkinson, counsel for the respondent, his witnesses were called.

Mr. Randolph observed that various considerations, which it was unnecessary to detail, induced him, on behalf of the managers, to move a postponement of the trial till to-morrow, when they hoped to be prepared to proceed with it.

Mr. Harper said that, on behalf of Judge Chase, he would not object to the motion.

The President informed the managers that the Senate acceded to their request, and added, that the Senate would attend to-morrow at 12 o'clock, for the purpose of proceeding with the trial.

The court thereupon adjourned.

2354. Chase's impeachment continued.

During the Chase trial the House attended daily without notice from the court, except on a special occasion, when the hour was changed.

Order of proceeding in the Chase trial during the introduction of evidence.

The journal of an impeachment trial records the names of witnesses, but not their testimony, except when it is subject of objection.

By consent, during the Chase trial, a witness for respondent was examined while the managers were presenting testimony.

In an impeachment trial the discharge of witnesses is determined by the Senate, sometimes in conformity with the consent of the parties.

Mr. Justice Chase, after attending during much of his trial, asked leave to retire, and was informed that the rules did not require his attendance.

Mr. Justice Chase did not, after reading his reply, participate personally in the conduct of his case, beyond waiving objection to one question.

The Presiding Officer of the Senate frequently put questions to witnesses during the Chase trial.

In the Chase impeachment the respondent introduced additional counsel during the trial.

On February 9,[1] and thereafter during the continuation of the trial, the high court met daily at 12 o'clock, and until February 23, near the end of the session, the House of Representatives in Committee of the Whole House attended with the managers without notice from the court. A single exception is noticed, however. On February 13[2] the two Houses met at noon to count the electoral vote. After that duty was concluded, the Secretary of the Senate presented the following message:

Mr. Speaker: I am directed to inform this House that the Senate will, at half past 2 o'clock on this day, be ready to proceed on the trial of the impeachment against Samuel Chase, one of the associate justices of the Supreme Court of the United States.

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[1] Journal of Impeachments, p. 517; Annals, p. 153.

[2] House Journal, p. 137; Senate Impeachment Journal, p. 518.

Accordingly the managers and the House attended.

The trial proceeded in this order:

On February 9,[1] Mr. Randolph, chairman of the managers, opened the cause. Then witnesses for the managers were sworn, gave testimony, and were crossexamined. The Journal states the name of each witness, but not his testimony, unless any portion was objected to and became the subject of decision by the court. On February 13,[2] while the managers were still presenting their testimony, at the request of Mr. Harper, counsel for the respondent, and with the consent of the managers, John Basset, a witness on the part of Judge Chase, was sworn and examined, in consequence of the peculiar situation of his family requiring his immediate return home.

On February 14,[3] while the managers were putting in their testimony, the respondent requested that Charles Lee, esq., might also be allowed to appear as one of his counsel.

On February 15,[4] the managers having completed their testimony, the respondent was notified that he might proceed to make his defense. Thereupon Mr. Harper, in his defense, addressed the court, and then proceeded to adduce witnesses.

On February 19,[4] on request, and with consent of parties, David Robinson, a witness, was discharged.

Also on February 19,[5] the following occurred:

Mr. HARPER. I am desired by Judge Chase to make of this honorable court the request contained in the following letter, which I will read:

"Mr. President: The state of my health will not permit me to remain any longer at this bar. It is with great regret I depart before I hear the judgment of this honorable court. If permitted to retire, I shall leave this honorable court with an unlimited confidence in its justice; and I beg leave to present my thanks to them for their patience and indulgence in the long and tedious examination of the witnesses. Whatever may be the ultimate decision of this honorable court, I console myself with the reflection that it will be the result of mature deliberation on the legal testimony in the case, and will emanate from those principles which ought to govern the highest tribunal of justice in the United States."

The President observed that the rules of the Senate did not require the personal attendance of the respondent; whereupon Judge Chase bowed in a very respectful manner and withdrew. Until this time the respondent had attended each day. Thereafter he did not attend. While in attendance he had not, after the reading of his reply, participated personally in the conduct of the defense, except in one instance to say that he had no objection to a question which his counsel had challenged.[6]

The President of the Senate frequently put questions to the witnesses as the trial proceeded.

On February 20[7] at the conclusion of the testimony, a request was made that a certain witness, a Mr. Tilghman, be discharged, and the following took place:

Mr. Harper said the counsel for the respondent would have no objection to discharge all the witnesses, but must object to discharging part of them.

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[1] Senate Impeachment Journal, p. 517.

[2] Senate Impeachment Journal, p. 519; Annals, p. 222.

[3] Senate Impeachment Journal, p. 519.

[4] Senate Impeachment Journal, p. 522.

[5] Journal, p. 522; Annals, p. 310.

[6] Annals, p. 171.

[7] Annals, p. 312.

The PRESIDENT. If the gentlemen do not agree upon the discharge of the witnesses, I will take the sense of the Senate upon the point.

Mr. HARPER. The particular situation of Mr. Tilghman's family requires his return to Philadelphia. I must therefore request that his further attendance be dispensed with.

The managers consented, and Mr. Tilghman was discharged.

The question was then taken by the President on the discharge of the witnesses, and lost; there being 16 votes in the affirmative and 17 in the negative.

Mr. Rodney requested the discharge of the witnesses from Delaware; which being consented to by the respondent's counsel, they were discharged.

It may be proper here to notice that, from time to time, during the trial, witnesses were discharged with consent of the parties.

2355. Chase's impeachment, continued.

In the Chase impeachment, by agreement, the managers had the opening and close of the final arguments.

Those making the final arguments of the Chase trial were limited neither as to time nor numbers.

On February 19,[1] the following occurred as to the concluding arguments:

The PRESIDENT. Is the course of the arguments on each side understood?

Mr. NICHOLSON. We understand that the managers will open; that reply will be made by the counsel for the respondent, and that the managers will then close.

Mr. KEY. This is the usual course, and we have no objection to it.

The testimony being closed, on February 20,[2] Mr. Early commenced for the managers the argument in support of the articles, and was followed by Mr. Campbell, also in behalf of the managers, and then by Mr. Clark, also a manager.

Then Messrs. Hopkinson, Key, Lee, Martin, and Harper were severally heard for the respondent.

Finally Messrs. Nicholson, Rodney, and Randolph concluded for the managers.

2356. Chase's impeachment continued.

The managers of the Chase impeachment resisted strenuously the argument that impeachment might be invoked only for indictable offenses.

The argument of Mr. Manager Campbell in the Chase trial on the nature of the power of impeachment.

In their arguments the managers and counsel for the respondent considered not only the evidence as tending to substantiate the charges set forth in the articles, but discussed at length the meaning and application of the Constitution in those clauses establishing the remedy of impeachment.

Mr. Campbell, of the managers, said:[3]

The first provision in the Constitution on this subject (art. 1, see. 3,), declares that the Senate shall have the sole power to try all impeachments. Here we discover the great wisdom of the framers of the Constitution. The highest and most enlightened tribunal in the nation is charged with the protection of the rights and liberties of the citizens against oppression from the officers of Government under the sanction of law; unawed by the power which the officer may possess, or the dignified station he may fill, complete justice may be expected at their hands. The accused is called upon before the same tribunal, and in many instances, before the same men, who sanctioned his official elevation, to answer for abusing the powers with which he had been intrusted. Men who are presumed to have had

[1] Annals, p. 311.

[2] Senate Impeachment Journal, pp. 522, 523.

[3] Annals, p. 331.

a favorable opinion of him once are to be his judges; no inferior or coordinate tribunal is to decide on his case, which might from motives of jealousy interest be prejudiced against him and wish his removal. No, sir; his judges, without the shadow of temptation to influence their conduct, are placed beyond the reach of suspicion.

The next provision in the Constitution declares that judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

Here the Constitution seems to make an evident distinction between such misdemeanors as would authorize a removal from office, and disqualification to hold any office, and such as are criminal, in the ordinary sense of the word, in courts of common law, and punishable by indictment. So far as the offense committed is injurious to society, only in consequence of the power reposed in the officer being abused in the exercise of his official functions, it is inquirable into only by impeachment, and punishable only by removal from office and disqualification to hold any office; but so far as the offense is criminal, independent of the office, it is to be tried by indictment, and is made punishable according to the known rules of law in courts of ordinary jurisdiction. As, if an officer take a bribe to do an act not connected with his office, for this he is indictable in a court of justice only. Impeachment therefore, according to the meaning of the Constitution, may fairly be considered a kind of inquest into the conduct of an officer, merely as it regards his office; the manner in which he performs the duties thereof; and the effects that his conduct therein may have on society. It is more in the nature of a civil investigation than of a criminal prosecution. And though impeachable offenses are termed in the Constitution high crimes and misdemeanors, they must be such only so far as regards the official conduct of the officer; and even treason and bribery can only be inquired into by impeachment, so far as the same may be considered as a violation of the duties of the officer, and of the oath the officer takes to support the Constitution and laws of the United States, and of his oath of office; and not as to the criminality of those offenses independent of the office. This must be inquired into and punished by indictment.

This position is strongly supported by the mode of proceeding adopted by this honorable court in cases of impeachment. You issue a summons to give notice to the accused of the proceeding against him; you do not consider his personal appearance necessary; you issue no compulsory process to enforce his personal attendance; and you pass sentence, or render judgment on him in his absence. But, in all criminal prosecutions, compulsory process must issue at some stage of it to enforce the defendant's appearance; unless outlawry in England be considered an exception, which, it is believed, is not resorted to in this country, and his personal appearance is considered absolutely necessary; and in almost every case he must be present when sentence is pronounced against him. This construction of the Constitutional provision appears to be absolutely necessary, to avoid the absurd consequence that would arise from a different construction; that of punishing a man twice for the same offense, which could not have been intended by the framers of the Constitution. The nature of the judgment which you are bound to render, and not to exceed, appears also conclusive on this head. You can only remove and disqualify an individual from holding any office of honor, trust, or profit. This can not be considered a criminal punishment; it is merely a deprivation of rights; a declaration that the person is not properly qualified to serve his country. Hence I conceive that, in order to support these articles of impeachment, we are not bound to make out such a case as would be punishable by indictment in a court of law. It is sufficient to show that the accused has transgressed the line of his official duty, in violation of the laws of his country; and that this conduct can only be accounted for on the ground of impure and corrupt motives. We need not hunt down the accused as a criminal, who had committed crimes of the deepest die; and this honorable court are not authorized to inflict a punishment adequate to such crimes, if they had been committed and could be established. With this view of the meaning of the Constitutional provision relative to impeachments, I shall proceed to examine the articles now under consideration, and the evidence given to support them. In the course of this examination, we apprehend it will clearly appear that the whole conduct of the judge in the several transactions, for which charges are alleged against him, had its origin in a corrupt partiality and predetermination unjustly to oppress, under the sanction of legal authority, those who became the objects of his resentment in consequence of differing from him in political sentiments; turning the judicial power, with which he was vested, into an engine of political oppression.

2357. Chase's impeachment continued.

The argument of Mr. Manager Nicholson on the nature of the power of impeachment.

Mr. Manager Nicholson said: [1]

But, sir, there is one principle upon which all the counsel for the accused have relied, upon which they have all dwelt with great force, and to the maintenance of which they have directed all their powers, that we can not assent to; we mean to contend against it, because we believe it to be totally untenable, and because it is of the first importance in the decision of the question now under discussion. We do not contend that, to sustain an impeachment, it is not necessary to show that the offenses charged are of such a nature as to subject the party to an indictment, for the learned counsel have said that the person now accused is not guilty, because the misdemeanors charged against him are not of a nature for which he might be indicted in a court of law.

To show how entirely groundless this position is, I need only pursue that course which has been pointed out to us by the respondent himself and his counsel. I might refer to English authorities of the highest respectability, to show that officers of the British Government have been impeached for offenses not indictable under any law whatever. But I feel no disposition to resort to foreign precedents. In my judgment, the Constitution of the United States ought to be expounded upon its own principles, and that foreign aid ought never to be called in. Our Constitution was fashioned after none other in the known world, and if we understand the language in which it is written, we require no assistance in giving it a true exposition. As we speak the English language, we may, indeed, refer to English authorities for definitions, as we should refer to English dictionaries for the meaning of English words; but upon this, as upon all occasions, where the principles of our Government are to be developed, I trust that the Constitution of the United States will stand upon its own foundation, unsupported by foreign aid, and that the construction given to it will be, not an English construction, but one purely and entirely American.

The Constitution declares that "the judges both of the supreme and inferior courts shall hold their commissions during good behavior." The plain and correct inference to be drawn from this language is, that a judge is to hold his office so long as he demeans himself well in it; and whenever he shall not demean himself well, he shall be removed. I therefore contend that a judge would be liable to impeachment under the Constitution, even without the insertion of that clause which declares, that "all civil officers of the United States shall be removed for the commission of treason, bribery, and other high crimes and misdemeanors." The nature of the tenure by which a judge holds his office is such that, for any act of misbehavior in office, he is liable to removal. These acts of misbehavior may be of various kinds, some of which may, indeed, be punishable under our laws by indictment; but there may be others which the lawmakers may not have pointed out, involving such a flagrant breach of duty in a judge, either in doing that which he ought not to have done, or in omitting to do that which he ought to have done, that no man of common understanding would hesitate to say he ought to be impeached for it.

The words "good behavior" are borrowed from the English laws, and if I were inclined to rest this case on English authorities, I could easily show that, in England, these words have been construed to mean much more than we contend for. The expression durante se bene gesserit, I believe, first occurs in a statute of Henry VIII, providing for the appointment of a custos rotulorum, and clerk of the peace for the several countries in England. The statute recites, that ignorant and unlearned persons had, by unfair means, procured themselves to be appointed to these offices, to the great injury of the community, and provides that the custos shall hold his office until removed, and the clerk of the peace shall hold his office durante se bene gesserit. The reason for making the tenure to be during good behavior was that the office had been held by incapable persons, who were too ignorant to discharge the duties; and it was certainly the intention of the legislature that such persons should be removed whenever their incapacity was discovered. Under this statute, therefore, I think it clear that the officer holding his office during good behavior might be removed for any improper exercise of his powers, whether arising from ignorance, corruption, passion, or any other cause. To this extent, however, we do not wish to go. We do not charge the judge with incapacity. His learning and his ability are

[1] Annals, pp. 562–567.

acknowledged on all hands; but we charge him with gross impropriety of conduct in the discharge of his official duties, and as he can not pretend ignorance we insist that his malconduct arose from a worse cause.

If, however, a judge were not made liable to removal, from the very nature of the tenure by which he holds his office, we still insist that every judge conducting himself improperly in office comes under that clause of the Constitution which declares that "the President, Vice-President, and civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors."

We do not mean to contend against a position which one of the learned counsel took so much pains to prove, that the word "high" applies as well to misdemeanors as to crimes; nor do we deem it important at this time to inquire whether a civil officer of the United States can be removed for offenses not committed in the discharge of his official duties. It will be time enough to make this inquiry when the case presents itself. At present we aver that the party charged has been guilty of a high misdemeanor in office, and that he ought to be removed for it.

Here, however, we are met by being told, that although his conduct may have been improper, yet that he is not liable to impeachment, unless the offense is of such a nature as that he might be indicted for it in a court of law.

If this be true, as it relates to a judge, the Constitution, to be consistent with itself, must make it universally true; and yet, if the doctrine be admitted, the Constitution will be found to be at variance with itself. Treason is an offense which may or may not be committed in the discharge of official duty, and no doubt the party committing it may be indicted. Bribery is an offense for which a judge may be indicted in the courts of the United States, because an act of Congress makes provision for it, and declares the punishment; but there is no law by which any other officer of the United States can be indicted for bribery. If, therefore, the President of the United States should accept a bribe, he certainly can not be indicted for it, and yet no man can doubt that he might be impeached. If one of the heads of Departments should undertake to recommend to office for pay, he certainly might be impeached for it, and yet, I would ask, under what law, and in what court could he be indicted?

To this, perhaps, it might be answered, that bribery is one of those offenses for which the Constitution expressly provides that the officer may be impeached. This is true; but let us proceed further, and inquire whether there are not other offenses for which an officer may be impeached, and for which he can not be indicted?

If a judge should order a cause to be tried with eleven jurors only, surely he might be impeached for it, and yet I believe there is no court in which he could be indicted. You, Mr. President, as Vice-President of the United States, together with the Secretary of the Treasury, the Chief Justice, and the Attorney-General, as commissioners of the sinking fund, have annually at your disposal $8,000,000, for the purpose of paying the national debt. If, instead of applying it to this public use, you should divert it to another channel, or convert it to your own private uses, I ask if there is a man in the world who would hesitate to say that you ought to be impeached for this misconduct? And yet there is no court in this country in which you could be indicted for it. Nay, sir, it would amount to nothing more than a breach of trust, and would not be indictable under the favorite common law.

But, sir, this ground, which was so strenuously fought for, will probably be abandoned, and instead of our adversaries maintaining that the offense must be of an indictable nature, they will, like one of the honorable counsel (Mr. Harper), go a step back and say that it must be a breach of some known positive law. Thus they will endeavor to shelter their client by saying that there is no act of Congress declaring it illegal for a judge to deliver his opinion on the law before counsel have been heard, or to make political harangues from the bench.

There are offenses for which an officer may be impeached, and against which there are no known positive laws. It is possible that the day may arrive when a President of the United States, having some great political object in view, may endeavor to influence the legislature by holding out threats or inducements to them. A treaty may be made which the President, with some personal view, may be extremely anxious to have ratified. The hope of office may be held out to a Senator; and I think it can not be doubted, that for this the President would be liable to impeachment, although there is no positive law forbidding it. Again, sir, a Member of the Senate or of the House of Representatives may have a very dear friend in office, and the President may tell him unless you vote for my measures your friend shall be dismissed. Where is the positive law forbidding this, yet where is the man who

would be shameless enough to rise in the face of the country and defend such conduct, or be bold enough to contend that the President could not be impeached for it?

It was said by one of the counsel that the offense must be a breach either of the common law, a State law, or a law of the United States, and that no lawyer would speak of a misdemeanor, but as an act violating some one of these laws. This doctrine is surely not warranted, for the Government of the United States have no concern with any but their own laws. In a State court, I would speak of a misdemeanor as an offense against a State law; in the courts of the United States, I would speak of it as an offense against an act of Congress; but, sir, as a member of the House of Representatives, and acting as a manager of an impeachment before the highest court in the nation, appointed to try the highest officers of the Government, when I speak of a misdemeanor, I mean an act of official misconduct, a violation of official duty, whether it be a proceeding against a positive law, or a proceeding unwarranted by law.

If the objection that the offense must be of an indictable nature, or against some positive law, means anything, it must be that the misconduct for which a judge or any other officer may be impeached, is either made punishable by, or is a violation of an act of Congress, for we are not to be regulated either by the common law or a State law. What, then, would be the result? I have pointed out several instances of gross misconduct in violation of no act of Congress, and yet under this doctrine he is to be permitted to pursue his wicked courses until every possible offense is defined by statute. This, too, would teach us that we have done wrong heretofore, for at the last session a judge was impeached and removed from office for drunkenness and profane swearing on the bench, although there is no law of the United States forbidding them. Indeed, I do not know that there is any law punishing either in New Hampshire, where the offense was committed. If it was said by one of the counsel that these were indictable offenses. I, however, do not know where; certainly not in England. Drunkenness is punishable there by the ecclesiastical authority, but the temporal magistrate never had any power over it until it was given by a statute of James I, and even then the power was not to be exercised by the courts, but only by a justice of the peace, as is now the case in Maryland, where a small fine may be imposed.

But the attorney-general of Maryland (Mr. Martin) admits that offenses may be of so heinous a nature that their punishment carries infamy with them, and that, though not committed in the discharge of official duty, yet if against a State law, the party may be impeached and removed from office. This, though not very material to the present question, may serve us in showing how inapplicable the doctrine is, that the offense must be against a State law or the common law. I will suppose that in New Hampshire there is no law punishing profane swearing. In Maryland a magistrate is authorized to impose a fine of 33 cents, and if this is not paid instantly the offender may be put in the pillory and receive thirty-nine lashes. The punishment is infamous, and if inflicted on a judge, according to the idea of this gentleman, he is to be impeached and removed from office. If the same offense is committed in New Hampshire, the judge is not to be removed, not because he has been guilty of a lighter offense, but because there is no State law punishing it. If, then, the State law is to be made the criterion, a judge in Maryland is to be removed from office for that which he might do with impunity in another State.

To carry this idea a little further: There was once in the State of Connecticut, and may be yet for aught I know, a celebrated code called the Blue Laws. Under the provisions of this code, I believe it is a fact that a captain of a ship was tied up and publicly whipped, because, on returning from a long voyage, he met his wife on a Sunday at the front door and kissed her. This was deemed a high offense, and was ignominiously punished. Now, if we are to be governed by the State laws, I trust the Blue Laws of Connecticut will be rejected, and that our grave judges may be allowed to kiss when and where they please, as to their wisdom shall seem meet, without incurring the pains and penalties of an impeachment. This, sir, may be somewhat ludicrous, but I hope it is not, therefore, the less illustrative of the absurdity of the doctrine contended for. It has been said that the offenses for which a judge or other officer is to be impeached ought to be defined by act of Congress. This is impossible. Such is the multiplicity of passions that sway the human heart, such is the variety of human action, that a code of laws never did and never can exist in which all human offenses are defined. The Constitution is sufficiently definite when it declares that a judge shall hold his office during good behavior, and that all civil officers shall be removed for high crimes and misdemeanors. The law of good behavior is the law of truth and justice. It is confined to no soil and to no climate. It is written on the heart

of man in indelible characters, by the hand of his Creator, and is known and felt by every human being. He who violates it violates the first principles of law. He abandons the path of rectitude, and by not listening to the warning voice of his conscience, he forsakes man's best and surest guide on this earth. The best and ablest judge will often err in mere matters of law, but as to principles of duty, in discharging acts of common justice to his fellow-men, he can never err so long as he follows conscience as his guide, and suffers justice to be the only object which he has in view.

2358. Chase's impeachment continued.

The argument of Mr. Manager Rodney on the nature of the power of impeachment.

Mr. Manager Rodney, at greater length, discussed this question: [1]

We have been told by that able lawyer, the attorney-general of Maryland, that a judge can not be impeached for any offense which is not indictable; nor, indeed, for an indictable offense, unless it be a high crime or misdemeanor; and not even for a high crime or misdemeanor, except such as stamp infamy on the character and brand the soul with corruption. A variety of cases have been put to explain his ideas. The law books and the Constitution have been relied on to support those positions, which it becomes my duty to examine. Without troubling you to remove the lumber of the books, let me call your attention, in the first place, to the Constitution. The Constitution shall be my text. I think I shall be able to demonstrate that, in order to render an offense impeachable, it is not necessary that it should be indictable. But, I will go further and prove that, agreeably to the learned counsel's own principles, Judge Chase has committed indictable offenses. Taking his own explanation of crimes and misdemeanors, and recurring to his authority, I will prove that, within the strictest terms of the definition on which he relies, Judge Chase is guilty, not merely of misdemeanors in the various acts of judicial misbehavior, but of aggravated crimes against the express language of the laws and the positive provisions of the Constitution.

In adverting to the Constitution, when looking at one part, we should take a view of the whole instrument to fix the proper construction. In examining any provision, we should consider the bearing and tendencies of all the rest. By adopting this rule we shall preserve order and harmony throughout the system.

The first place in which the subject of impeachment is mentioned in the Constitution is in the first section of the first article. The language used by those who framed it is, in my humble opinion, too plain to be misconceived, and too clear to be misunderstood: "The House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment."

This section vests the exclusive authority to impeach in the immediate representatives of the people. The power thus delegated is general and comprehensive. It is not limited to any particular acts or transgressions, but is coextensive with every proper object or subject of impeachment. The House of Representatives is thus constituted, most emphatically, the grand jury of the nation: A high and responsible authority, which, I trust, will always be exercised with prudence and discretion, directed with impartiality and justice. But I do confidently hope that there will ever be found sufficient spirit and firmness to arraign the guilty delinquent, however elevated his station, when the Constitution or laws have been infringed, the tenure of office broken, or its duties violated.

The next passage in order which touches this topic and to which I shall refer is the third section of the same article: "The Senate shall have the sole power to try all impeachments. When sitting for that purpose they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside. And no person shall be convicted without the concurrence of two-thirds of the Members present."

This clause establishes a tribunal for the trial of impeachments. To the Senate this important trust is wisely confided. It prescribes the manner in which the jurisdiction shall be exercised, directs that the Members shall be under oath or affirmation, and fixes the number necessary to convict. Let us proceed a step further in the path: "Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment, according to law."

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[1] Annals, pp. 591–610.

The part I have just read contains two very salutary provisions. The first limits the extent of the punishment to be inflicted by the Senate. The second, as a necessary consequence of the former, reserves to the ordinary tribunal of law the right to proceed by indictment. This last provision has been a fruitful source of argument to the learned counsel. They have very ingeniously played upon these terms, and, in the zeal of their imaginations, have fancied that they proved to a demonstration the position, that an offense must be indictable or it is not impeachable. There may be magic in their argument, but I do not perceive there is any logic. The superstructure which they have erected on this basis is easily demolished. From the language of this clause they draw the inference that the framers of the Constitution intended that no person should be impeached for any offense for which he was not liable to be indicted. Is this the fair import of the expressions? The text of this instrument is remarkably free from ambiguity. Clearness, correctness, and precision are its leading characteristics. With a very few exceptions it speaks a language intelligible by all. Had it been the design and wish of the authors of the Constitution that no offenses should be impeachable which were not indictable, they would have declared so in express and positive terms, and left nothing for inference or conjecture. This they have not done, and we may reasonably presume they did not intend to do. They prudently looked into the volume of history, where they saw the shocking purposes to which, in evil times, the power of impeachments had been basely and inhumanly prostituted. They read in those instructive pages the dear-bought lessons of experience. and wisely ordained limits which the authority to punish should not exceed. They fixed a ne plus ultra for the tribunal that they established which their severest judgments should not pass. They knew, at the same time, that crimes might be perpetrated and offenses committed which would demand additional chastisement. The loss of office, and disqualification to hold any in future, the maximum of punishment which they had prescribed, would be very inadequate and bear little proportion to the atrocious guilt which might be incurred. Under the influence of these impressions they reserved to the tribunals established by law the right to inflict the just penalties annexed to this class of cases. Without any intention whatever, when any acts had been committed which manifested an unfitness for office, or when there had been a breach of the tenure by which it was held, by malconduct or misbehavior, to prevent the proceedings by impeachment, although the case might not be such as to warrant any additional punishment at law. This, I apprehend, is the object they had in view, and this is the fair, easy, natural, and obvious sense of the words they have used.

Those conversant with the juridical history of England, or who have studied her political annals, must be sensible of the deplorable situation to which that country has been reduced, at different periods, by the abuse of the power of impeachment. The revengeful exercise of this authority has too often deluged the scaffold with blood. In that country the proceeding by impeachment for any offense supersedes all other modes. The person accused, whether he be acquitted or condemned, can not afterwards be indicted for the same offense, or called to an account before the ordinary tribunals. The former course is a complete bar to the latter. To prevent those consequences flowing from a proceeding by impeachment under the Constitution, those who formed that instrument, at the same time that they limited the punishment, have expressly declared it shall have no effect to bar a trial before the ordinary courts, but that the party shall be liable to indictment and punishment according to law. Without this positive provision, as we are almost as much in the habit of drawing on the Bank of England for law as our merchants are for cash or credit, we might have incorporated a principle into our code totally repugnant to the system. The Constitution has drawn the true line on this subject. From a mere reprimand or temporary suspension, the court may ascend in the scale of punishment to removal and disqualification. But thus far can they go and no farther. They can not pass the Rubicon. If the crime deserves a more exemplary sentence recourse must be had to the ordinary mode of proceeding, and then their judgment is not pleadable in bar to an indictment. By this means adequate punishment may in all cases be inflicted.

In England every person, in a public or private capacity, either as an officer or an individual, is liable to be proceeded against by impeachment. In this country the sphere of impeachment is properly limited. The attorney-general of Maryland has taken a long, tedious, and circuitous march to arrive at this point, which I would readily have yielded without an argument. I do not recollect that any of my colleagues contended for the position that every man in this country, in his individual capacity, might be an object of impeachment. For myself I utterly disclaim the idea. Admitting, as I do, in its fullest extent, this wide distinction between the power delegated by the Constitution and that exercised in England, which embraces every subject of that kingdom, how does it bear on the case or affect the

argument? After laboring for a considerable time, and employing all his talents, and that fund of legal knowledge which is inexhaustible, to prove that the House of Representatives can not impeach every citizen indiscriminately, the learned attorney-general has not favored us with any application of his principle to the present cause. It proves certainly one among many other broad lines of difference which exist between the British doctrines on the subject of impeachment and the constitutional provisions of this country. In this respect it adds to the weight of our scale. It shows how cautious we should be in bowing down to British precedents which can not be perfectly applicable. I hope I have satisfied the court that the gentlemen are mistaken in their argument on this part of the Constitution. In the general wreck of their defense I conceive this sinking plank, to which they have clung, can not afford them the most distant prospect of safety. We will now proceed a little further in the broad and plain road of the Constitution, carefully examining the ground on which we move.

By the fourth section of the second article of the Constitution it is provided that "The President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors."

The learned counsel have placed great reliance on this passage to prove that an officer must be guilty, not merely of an indictable offense (as they concede every crime or misdemeanor to be), but must have committed a high crime or high misdemeanor to justify an impeachment. One of the learned gentlemen, to fix the true construction of the term "or other high crimes and misdemeanors," commented at great length on the expressions. To illustrate the subject his fancy readily formed an objection which with logical accuracy he removed. He demonstrated that, agreeably to the strictest grammatical construction and the nicest propriety of speech, the epithet high was to be considered as prefixed to misdemeanors as well as to crimes. In this manner the phantom which his own imagination raised was laid not by a spell, but by the exertion of his argumentative powers. We would willingly have conceded the point and spared him his labor and his breath. We mean not to cavil about trifles or dispute for straws.

Taking it for granted that he has given the proper construction to a part, let us examine what is the just sense of the whole of this passage. In plain English it commands upon the conviction by impeachment of certain atrocious offenses that the guilty officer shall be removed at all events. Depriving the court thus far of the discretion which they would otherwise have possessed as to the judgment they might pass. Having previously limited, in general cases, the punishment which they might inflict, according to their discretion, by establishing a maximum which they should not exceed in this particular grade of flagrant offenses, they have fixed the sentence which they shall pass. The language of the Constitution is peremptory and imperative. Those convicted of such daring enormities of those high crimes or high misdemeanors must be removed from office, which they have justly forfeited. This is the minimum of punishment to be inflicted. Perhaps those who penned the great charter of the Union apprehended that in evil times some high officer of the United States clothed with power and armed with influence might be proved to have committed the base and detestable crime of bribery, or some other equally great, by evidence too strong and too powerful to be resisted, and in an unfortunate hour, awed by fear or seduced by favor, the constitutional judges would not hurl him at once from the seat which he was unworthy to occupy, but permit him to remain in his station, to the disgrace of the country and to the injury of the people. Hence they were induced to make this wholesome provision which left nothing to the discretion of the judges. But is there a word in the whole sentence which expresses an idea or from which any fair inference can be drawn that no person shall be impeached but for "treason, bribery, or other high crimes and misdemeanors?" It does not pretend to specify the various acts of an officer which may subject him to an impeachment: its whole object is to define and fix the punishment which he shall incur on the commission of particular offenses, which is removal from office. This is the least penalty they can inflict in such cases, and God knows it would be much too little had they not in the former part provided that after stripping the traitorous impostor of the insignia of office and power the ordinary tribunals may add to the constitutional sentence of the Senate the fines or forfeitures imposed by law.

From the most cursory and transient view of this passage I submit with due deference that it must appear very manifest that there are other cases than those here specified for which an impeachment will lay and is the proper remedy. In these particular cases the punishment is ascertained, to wit, removal from office; but in a clause to which I have sometime since adverted it is discretionary. Where was the necessity or use of that, if this defined all the impeachable offenses and specified the punishment?

We must, if possible, give effect to every sentence of this instrument. We must not suppose that its authors made nugatory provisions. The sense and meaning which I have given to their language and the constructions which I have maintained will give force and effect to every word.

The system of impeachment thus understood, and I humbly submit rationally explained, is perhaps as little liable to exception as any branch of the Constitution. It is stripped of those terrible instruments of death and destruction which have made such dreadful havoc and carnage in the ages that have preceded us. We have been benefited by the sanguinary precedents of barbarous times. We have been taught wisdom ourselves by the folly of others. We have improved the advantages we possessed, and thus, according to his own inscrutable ways, has the benevolent Author of our existence brought good out of evil.

In guarding effectually against the cruel and vindictive punishments which the extraordinary tribunal of impeachment might inflict, in the exacerbations of party violence and personal animosity, the fathers of the Constitution took care to provide that a certain grade of offenses should deprive the guilty incumbent of his office, thereby rendering him a harmless object to the community when dispossessed of his abused authority. Nay, they went further. Their wisdom and prudence led them to make a specific declaration that, after being deprived of his power, he should be subject to the legal consequences of his guilt upon trial and conviction before the ordinary tribunals at law. Thus rendering the system perfect and complete.

There is an important provision contained in the Constitution, intimately connected with this subject, to which I now beg leave to refer. It will be found in the first section of the third article:

"The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior."

With this particular part of the Constitution the learned judge must have been more especially acquainted when he accepted of his present office, and must then have expressly accepted it on the terms specified. No man can seriously say that for a judge to continue in the exercise of his authority and the receipt of his salary after any acts of misbehavior is not a violation of this essential provision of the Constitution. He holds his office explicitly and expressly during good behavior. The instant he behaves bad he commits a breach of the tenure by which he holds the possession, and the office becomes forfeited. The people have leased out the authority upon certain specified terms. So long as he complies with them, and not a moment longer, is he entitled to exercise the power which was not intended for his individual advantage, but for their benefit. But, sir, who is to take notice of these acts of misbehavior? How are they to be ascertained, and what shall be considered as such? Are the people in their individual capacity, ipso facto, on the commission of the act to declare the office forfeited, and is a judge then to cease from his labors? Or must it not be officially, or rather judicially, ascertained? This, I conceive, would be the proper mode of procedure. Has the Constitution provided no tribunal for this purpose? I answer it has, most indubitably. By the Constitution the Senate, as the court, and jury, too, in cases of impeachment, has the sole power of removing from offices those who hold them by the tenure of good behavior. If a judge misbehave, he ought to be removed, because agreeably to the plainest provision he has forfeited his right to hold the office. The Constitution having established this single mode of removal, and having declared that a judge shall hold his office only during good behavior, it becomes the duty of the representatives of the people, as the grand inquest of the nation, vested with the general power of impeachment, when they know, of their own knowledge or from the information of their constituents, that acts of misbehavior have been committed, to present the delinquent to this high tribunal, whose powers are competent to inquire into the case and apply the remedy; whose authority is coextensive with the complaint, commensurate with the object, and adequate to the redress of the evil. Shall it be said that it is true the Constitution has declared that a judge shall hold his office no longer than he behaves himself well, and that though he behaves never so ill it has provided no means to turn him out of office if he has the hardihood to remain in his seat? If such a doctrine be contended for, it is too preposterous to receive the sanction of this court. It would render this provision nugatory indeed. It would do more. It would be establishing the principle that whether they behave well or ill they must continue in office, because there was no mode fixed for removing them. This would be the strongest construction that plain language, obvious to the common sense of the most unlettered man, ever received in a court of justice. The method I have

pointed out solves all difficulties at once and releases us from every embarrassment on this subject. It makes the Constitution consistent with itself and preserves uniformity throughout all the parts.

The learned counsel were compelled to make a show in maintenance of unsound doctrines to give the appearance of support to positions equally untenable.

I flatter myself that every member of this court is by this time convinced that if a judge misbehave, he should be deprived of his office, because guilty of a breach of the tenure by which it is held; that any acts of misbehavior must be judicially inquired into and ascertained; that the Constitution, having delegated to the House of Representatives exclusively the general power to impeach, acts of misbehavior are proper subjects of impeachment, upon conviction of which the Senate has the authority to remove an officer, and is bound to exercise it. Shall we be told, then, that no matter how gross the acts of judicial misbehavior, or how flagrant the misconduct of a judge, he can not be removed from office, nay, he can not be impeached, unless guilty of treason or bribery or some crime equally great? Sir, it is impossible that the intelligent understandings and the mature judgments of this court could countenance for a moment such an idea.

The terms "during good behavior" appear to have been considered as very vague and indefinite by the learned counsel for the defendant, from the manner in which they have argued the case. When, in the strong, nervous language of my honorable friend, the conduct of the accused has been described in the most appropriate terms in the articles of impeachment, they have treated them with levity, as if they did not understand their import, because they admitted of no serious refutation. The clear explanation of the expression "during good behavior," and the lucid exposition of this passage contained in the charges themselves, they seem unwilling to comprehend. The commentary is as unintelligible as the text. When to such conduct as was never before witnessed in a court of justice is applied the epithet of novel, we have been told by one counsel that the term is too uncertain to be comprehended—no precise idea can be affixed to it, nor is the language sufficiently technical to constitute a criminal charge. When behavior the most rude and contumelious, disgraceful on any occasion, but truly degrading on the bench and unquestionably criminal, because calculated to bring the judiciary into the lowest contempt and to excite universal indignation against the tribunals of the country, is portrayed in the impressive style of truth, the age of captious sophistry or technical bigotry is resorted to for proving there is no sense or meaning in the charge. Upon what an ocean of uncertainty have we embarked when the plainest language is not understood! If sound, solid common sense were to be confounded by technical jargon, the tower of Babel would not present a greater confusion of tongues. Sir, when the gentlemen can not but feel the force of these charges, with what admirable ingenuity do they attempt to evade them! Is this tribunal, say they, to erect itself into a court of honor, or assume the chair of chivalry, and form a scale by which decorum and good manners may be nicely graduated? Is every slight deviation from the line of politeness at an assembly or drawing-room to be marked with accuracy and chastised with severity? The testimony furnishes apt and ready answers to those questions. The learned judge is not arraigned because he does not possess the polished manners of an accomplished gentleman, but for outraging all the rules of decency and decorum by conduct at which the plain sense of every honest man would revolt.

I beg this court seriously to consider whether a judge may not be guilty of acts of misbehavior inferior in criminality to treason or bribery for which he ought to be impeached, though no indictment would lay for the same. When gentlemen talk of an indictment being a necessary substratum of an impeachment I should be glad to be informed in what court it must be supported. In the courts of the United States or in the State courts? If in the State courts, then in which of them? Or, provided it can be supported in any of them, will the act warrant an impeachment? If an indictment must lay in the courts of the United States, in the long catalogue of crimes there are very few which an officer might not commit with impunity. He might be guilty of treason against an individual State, of murder, arson, forgery, and perjury, in various forms, without being amenable to the Federal jurisdiction, and unless he could be indicted before them he could not be impeached. Are we then to resort to the erring data of the different States? In New Hampshire drunkenness may be an indictable offense, but not in another State. Shall a United States judge be impeached and removed for getting intoxicated in New Hampshire, when he may drink as he pleases in another State with impunity? In some States witchcraft is a heinous offense, which subjects the unfortunate person to indictment and punishment; in several other States it is unknown as a crime. A greater variety of cases might be put to expose the fallacy of the principle and to prove how improper it would be for this court to be governed

by the practice of the different States. The variation of such a compass is too great for it to be relied on. This honorable body must have a standard of their own, which will admit of no change or deviation. The test by which they will try an impeachment can not be that of indictment. Even in England, to whose practice and whose precedents such constant recourse has been had, the learned counsel have not adduced a single case where a judge of one of their superior courts has been indicted for any malconduct in office. Nay, I believe I may defy them to show an example of the kind. The best authorities tell us they are not subject to indictment, but may be proceeded against by impeachment. They have been impeached, convicted, and punished for giving opinions which they knew to be contrary to law, and for a variety of misdeeds, but never in a solitary instance that I know of have they been indicted. I think I can put so many striking cases of misconduct in a judge for which it must be admitted that an impeachment will lay, though no indictment could be maintained, that the learned counsel themselves must be compelled at length to surrender this post at discretion, without any term of capitulation. I will not state the case of a judge willfully and designedly neglecting to hold a court on the day prescribed by law, for I am aware of the answer gentlemen would give, that it is an offense against a particular provision. But let use suppose Judge Chase, to comply with the forms of the law at the time appointed, should appear and open the court, and notwithstanding there was pressing business to be done he should proceed knowingly and willfully to adjourn it until the next stated period. He would be guilty of no violation of any positive law for which he might be punished by indictment; but ought he not to be impeached? Suppose he proceeded in the dispatch of business, and from prejudice against one party or favor to his antagonist he ordered on the trial of a cause, though legal grounds are exhibited for postponement. Is this not a proper subject of impeachment? And yet there is no express law infringed. If when the jury return to the bar to give the verdict, he should knowingly receive the verdict of a majority, is there any positive provision by which a jury shall be composed of twelve men and that their decision shall be unanimous? I believe even the learning of that profound lawyer (Mr. Martin), from the reading of laborious years and the indefatigable researches of a life devoted to the pursuit of his profession, could not show any positive provision in the Constitution of the United States or any statute of Congress on the subject. So far from it being originally necessary in civil cases that a jury should be unanimous, the late Judge Wilson (a great and venerable authority), magnum et memorabile nomen, asserts that a majority always decided agreeably to the primary principles of that valuable institution.

Again, there is no man so ignorant as to be insensible to manifest violations of the sanctuary of a court. It was never intended as a stage for the exhibition of pantomimes or plays. Were a judge to entertain the suitors with a farce or a comedy, instead of hearing their causes, and turn a jester or buffoon on the bench, I presume he would subject himself to an impeachment; and yet there is no positive law preventing a court from being converted into a theater or of preferring the buskin to the sock. If he should exhibit a tragic scene, in which an unfortunate fellow-citizen might find himself really no actor in the part which he bore, I presume his conduct would claim the attention of the House of Representatives, as the grand inquest of the nation. It must be unnecessary to multiply examples of misconduct in a judge against the known law of his duty, so manifest at first blush that the most callous conscience can not be insensible to them, not minutely specified and described (for that would be impossible) by particular provision in any legislative act, but all embraced and comprehended in the solemn oath which he takes to perform his duty faithfully and impartially as a judge. As a judge he is bound to execute the laws. Every opinion which he gives and every sentence which he passes must be in conformity to law and be authorized by it. It ought to be the judgment of the law and not his own individual opinion. If he willfully make a decree not sanctioned by law, he is guilty of misbehavior as a judge, for it is a glaring violation of the fundamental principles of his office. I shall have occasion in the course of my argument to advert to judicial opinions delivered by the accused which there was no legislative act to warrant, no precedent to authorize, no principle to sanction, and which the utmost latitude of legal discretion would not justify. In such a case, if this court be satisfied that he acted innocently wrong, that it was an honest error of judgment which led him astray, he will no doubt stand acquitted. But if, from a concurrence of circumstances, they are convinced that he erred through design, from prejudiced and partial motives, though he may not have been corrupted by a bribe, they will consider him as a proper subject of their jurisdiction, and a proper object for the exercise of their authority.

The doctrines of the learned counsel for the defendant would lead to a conclusion which they may not have contemplated, but which the country would feel. Time would fail me to enumerate the different offenses of various grades which a judge might commit, and for which he ought most assuredly to be impeached, though no indictment could be maintained in any of the Federal courts. If their positions were correct, a judge might violate all the Ten Commandments without subjecting himself to impeachment and removal; for I know of no method of removal but through the medium of impeachment. There is no law of the United States prohibiting drunkenness on the bench, or indeed punishing this vice at all, unless we look into the laws of a naval or military court-martial, and yet a judge ought certainly to be removed from office if guilty of habitual intoxication. The use of profane or obscene language by a judge is not expressly proscribed by any act of Congress with which I am acquainted, though if it were forbidden in general terms gentlemen might say with as much propriety as they have done in other cases, in the course of their argument, that every term, considered as such, ought to be enumerated, and yet, I believe, should a judge, in his place, be guilty of taking the name of his God in vain, of cursing and swearing on the bench, or using the obscene language of Billingsgate or St. Giles, he ought to be impeached and removed. The sancity of a court should he preserved unsullied, and the officer displaced who was capable of exhibiting so shocking an example, calculated to destroy all respect for, and confidence in, the judicial establishment of the country, and to corrupt the morals of the nation. But, sir, why need I enlarge on this subject? The counsel for the defendant have appeared at one stage of their argument to possess great respect and deference for precedent. To consider cases solemnly argued or deliberately adjudged as fixing the law so perfectly as to justify a court in absolutely preventing any counsel, even though concerned for a criminal, and that, too, in a capital case, from questioning principles thus established. If precedent will furnish us with a clue to the intricate labyrinth in which they have attempted to involve us, we are in possession of one equal to that of Ariadne.

Suffer me again to refer them to the precedent which I cited a few days since. I allude to the case of Judge Addison, in Pennsylvania. One of the counsel (Mr. Martin), for whose legal erudition I feel the greatest respect, has endeavored to impeach the authority of the highest tribunal in that State, and has asked if that decision is to be a precedent for this court? I was the more surprised at this, because his colleague (Mr. Lee) had cited, in the course of his argument, a case from Kirby's Connecticut Reports, decided by Chief Justice Ellsworth and his associates. I ask, sir, in reply, whether, when a case determined in one of the ordinary courts of Connecticut has been produced by the opposite counsel as entitled to consideration, the decision of the senate of Pennsylvania, the highest court of criminal judicature in that Commonwealth, ought not to be respected. Permit me to add that, in my humble opinion, there is as much propriety in referring to such examples as in recurring to British precedents. I have said, and with increasing confidence I repeat it, that this case, under the constitution of Pennsylvania, is emphatically stronger than the present, under the Constitution of the United States, on the much-litigated question whether a judge can be impeached for any act for which he can not be indicted. In the constitution of Pennsylvania, article 5 and section 2, there is a provision not to be found in the Constitution of the United States, by which a judge, for any reasonable cause, which shall not be sufficient ground for impeachment, may be removed by the governor, on the address of two-thirds of each branch of the legislature. This provision would seem to be intended to meet the distinction which the learned counsel have labored to establish. In this light Judge Addison himself on his trial considered it, and pressed the point most forcibly on the senate of Pennsylvania. He had the strongest interest in so doing. If this course had been pursued, he would have merely lost his office, but upon conviction by impeachment he dreaded the disqualification to hold any office which the senate might annex to the judgment of removal. But, sir, this is not the only reason, cogent as it is, for considering the case of Judge Addison particularly applicable to the present. It so happens that we have a decision of the supreme court of Pennsylvania on the very objection which the gentlemen now take, when the conduct of Judge Addison was brought before them previous to his being impeached. If the learned counsel will not give full faith and credit to the determination of the senate of Pennsylvania, perhaps they will admit the authority of her supreme court. I hope this tribunal, at least, will give it equal weight with that of the supreme court of Connecticut. A very correct account of the case will be found in the statement of the attorney-general on the trial of Judge Addison, taken in connection with a printed report of the case, which was produced by Mr. Dallas on that occasion. I will not detain this honorable court with reading all which is there recorded on this subject, but will

refer to pages 51, 52, 64, and 69 of Addison's trial, and endeavor to present them an accurate view of the case.

On the ground of an application filed by J. B. C. Lucas, then an associate judge of the same court in which Judge Addison presided, stating that Judge Addison, on a particular occasion, after having delivered a charge to the grand jury himself, had prevented Judge Lucas from addressing them, by ordering a constable to be sworn and the jury to be taken from the box, the attorney-general moved for leave to file an information against Mr. Addison.

The attorney-general made two points: First, that Judge Lucas had an equal right with the presiding judge to deliver a charge to the grand jury, on principle and authority. The chief justice, Shippen, immediately observed that it was unnecessary to speak to that point or to read authorities; speak to the second point—Is this conduct the subject of an information?"

After the argument was closed, the opinion of the court (Judge Breckenridge taking no part) was delivered by the chief justice, who stated that the proceeding was arbitrary, unbecoming, unhandsome, ungentlemanly, unmannerly, and improper, but "but that it was not indictable, nor the subject of an information," and that there was another remedy, referring no doubt to an impeachment; for the attorney-general states, in page 52, "That from what fell from the judges of the supreme court, when the case was before them, it might be easily inferred that impeachment was the proper mode to correct the evil complained of."

Thus we have the solemn adjudication of the supreme court that conduct in a judge may be impeachable, though no indictment can be maintained for it. 'We could not have formed for ourselves a precedent more apposite.

An impeachment was accordingly presented against Judge Addison by the constitutional authority to the senate of Pennsylvania. Pardon me for trespassing so much on your time as to read distinctly the articles, in order to put this court in possession of the whole case:

"ARTICLE 1. That the said Alexander Addison, being duly appointed and commissioned president of the several courts of common pleas, in the circuit consisting of the said counties of Westmoreland, Fayette, Washington, and Allegheny, within the territory of the said Commonwealth, while acting as president of the said court of common pleas of the said county of Allegheny, on Saturday, the 28th day of March, in the year of our Lord 1801, in open court of common pleas, then and there holden, in and for the county last aforesaid, did, after John Lucas, otherwise John B. C. Lucas, also duly appointed and commissioned one of the judges of the court of common pleas of the county last aforesaid, had, in his official character and capacity of judge as aforesaid, and as of right he might do, addressed a petit jury, then and there duly impaneled, and sworn or affirmed, respectively, as jurors, in a cause then pending, then and there, openly declare and say to the said jury, 'that the address delivered to them by the said John Lucas, otherwise John B. C. Lucas, had nothing to do with the question before them, and that they ought not to pay any attention to it;' thereby degrading or endeavoring to degrade and vilify the said John Lucas, otherwise John B. C. Lucas, and his character and office as aforesaid, to the obstruction of the free, impartial, and due administration of justice, and contrary to the public rights and interests of this Commonwealth.

"ART. 2. That the said Alexander Addison, being duly appointed and commissioned president as aforesaid, did, at a court of quarter sessions of the peace and court of common pleas, holden in and for the county of Allegheny aforesaid, on Monday, the 22d day of June, in the year of our Lord, 1801, under the pretense of discharging and performing his official duties as president aforesaid, unjustly, illegally, and unconstitutionally claim, usurp, and exercise authority not given or delegated to him by the constitution and laws of this Commonwealth, inasmuch as he, the said Alexander Addison, president as aforesaid, did, under pretense as aforesaid of discharging and performing his official duties, then and there, in time of open court, unjustly, illegally, and unconstitutionally stop, threaten, and prevent the said John Lucas, otherwise John B. C. Lucas, also duly appointed and commissioned one of the judges of the said courts, from addressing, as of right he might do, a grand jury of the said county of Allegheny, then and there assembled and impaneled, and sworn or affirmed, respectively, concerning their rights and duties as grand jurymen, thereby abusing and attempting to degrade the high offices of president and judge as aforesaid, to the denial and prevention of public right, and of the due administration of justice, and to the evil example of all others in the like case offending."

You have now a clear and comprehensive view of the grounds on which the impeachment was supported. The first charge accuses Judge Addison of speaking, in terms very unjustifiable for a presi-

dent of a court, of an address delivered to a petit jury by his associate, Judge Lucas. The language which he used, and the manner in which it was proved to have been delivered, are equally exceptionable. His conduct was rude, ungentlemanly, and utterly inconsistent with that decorum and respect which should be inculcated and practiced on the bench, to preserve the credit and the character of a court of justice. Its object and tendency was to deter Mr. Lucas from exercising his judgment and expressing his opinion from the bench, and to reduce him to a perfect cipher.

The other charge was for preventing Judge Lucas from addressing a grand jury. This was effected in the same rude and insolent manner, as will appear from the testimony of Judge Lucas himself, in pages 33 and 37 of the printed trial.

To support the first article, I believe it would not be possible to find any positive act or special provision prescribing what particular language a president of a court may use, and what he shall not, in reference to the opinion which an associate justice may have delivered. There is no legal barometer for weighing words, nor any particular law embracing all the variety of cases of lighter and darker shades which may occur. The learned counsel who supported the prosecution did not cite a single precedent, even, of the kind. There may have been a law to be found in the breast of every man of common sense and common manners, with which Judge Addison was not unacquainted, and upon which the Senate considered themselves perfectly justified in convicting him. This was the general, but clear and comprehensive law which marked his rights and duties as a judge—the law of his office, prescribed by his oath.

The second article, for preventing an associate judge from delivering a charge to the grand jury after they had received one from the president of the court, could not have been maintained on the ground of any express statute or legal usage. It is the first time I ever heard of such a case. The uniform practice in the courts to which I have been accustomed is for the chief justice or president to deliver the charge. This was more especially the case in the court in which Judge Addison presided, for it appears they had adopted a positive rule on the subject. The practice of a court of justice is generally considered as the law of that court. But the senate, believing on principle (and believing correctly) that the power of all the judges of the court was equal, pronounced a sentence of condemnation.

With these plausible circumstances to countenance him, Judge Addison, a gentleman of considerable celebrity both in the legal and political world, and of unquestionable talents, conducted his own defense. His principal reliance was on the very objection which the learned counsel for the present defendant now make. He contended that he had committed no act for which he was liable to indictment, and that he was, therefore, not subject to impeachment. In the position that his conduct was not indictable, he was supported by the opinion of the supreme court, who had, nevertheless, considered it a fit subject for impeachment. His argument was able and ingenious; but, sir, his objection was anticipated or answered in such a masterly manner, by a chain of reasoning so irresistible, that it produced complete conviction on the minds of the senate of Pennsylvania. This honorable court know the result. He has been not only removed, but disqualified to hold the office of judge in any court of law in that State. We have, then, the deliberate opinion of the senate of Pennsylvania, upon solemn argument, confirming the decision made by her supreme court. If these cases do not furnish us with lessons of instruction, I know not where such lessons are to be read.

I will remark, sir, further, in relation to this case, that had it not been for the extreme anxiety of Judge Addison to propagate his political dogmas from the bench, he would never have been reduced to this serious dilemma. Like the defendant, he converted the sacred edifice of justice into a theater for the dissemination of doctrines to which I hope I shall never subscribe. If I have a desire relative to the administration of justice, paramount to all others, it is that party and party spirit should banished from every court. My sincere and fervent prayer is that the laws, like the providence of God, may shed their protecting influence equally over all, without respect to persons or opinions.

I have been requested by the attorney-general of Maryland to state another and a recent case which has happened in Pennsylvania. For his satisfaction I will briefly inform this honorable court of all that took place on that occasion, in the least degree applicable to the present trial. Three of the judges of their supreme court were accused of fining and imprisoning, without the intervention of a jury, a fellow-citizen, for publishing a paper which they considered as a contempt of court. The judges were defended by two most able and eloquent counsel, who contended that the constitution, the laws, and the practice of Pennsylvania, by adopting the common law doctrines on the subject, justified the proceeding; and that if there was no law to justify it, their conduct flowed from an honest error in judgment, for which they were not liable to impeachment. But, sir, they did not attempt to maintain the

position contended for on this occasion, that to support an impeachment the conduct of a judge must be such as to subject him to an indictment. Nor could they, with any consistency, have supported such a doctrine, for their clients had before in the case of Mr. Addison decided that his conduct was not a proper subject of impeachment though it might be of indictment.

This precedent, then, fortifies the former decisions on this point, and adds another authority to those which previously existed, and to which I have adverted.

The judges were acquitted, I acknowledge, and were I to hazard an opinion, I would say because some of the members of the senate of Pennsylvania thought their conduct proceeded from an honest error of judgment. If this court shall be of the same opinion with respect to the conduct of Judge Chase, I trust they will follow the precedent and acquit him, and I shall cheerfully acquiesce in the decision.

I fear I shall fatigue this honorable court by noticing the various cases on this subject, but I can not omit pressing on their attention a decision of the most authoritative and binding nature, because it is one of their own. The case to which I allude and its attending circumstances must be fresh in the recollection of every Member of the Senate. The district judge of New Hampshire was impeached for habitual drunkenness on the bench, and for using profane and indecent language. It was not in evidence to the court that drunkenness or profane and indecent language were indictable by any law of that State. There is no law of the United States, unless we recur to the naval or military code, punishing these vices as offenses. Of course, sir, it was not pretended by the managers on that occasion, of whom I had the honor to be one, that any indictment could be maintained against Judge Pickering in any civil court of the United States, or of the individual State of which he was a citizen. I appeal to your recollection, sir, for the accuracy of this statement; and, let me ask, what was the result? A constitutional majority of the senate pronounced a verdict of guilty and passed a judgment of removal.

One of the counsel (Mr. Harper), of whose argument I may be permitted to observe, without disparagement to the talents and learning of his colleagues, that it contained an able and masterly defense of the conduct of the accused, sunk beneath the weight of this stubborn and conclusive precedent. It was a stumbling block which he could not remove out of his way, and he seemed compelled, reluctantly, to yield the principle to the decisive authority and pointed application of the case.

We have, then, the whole weight of American authority in our scale, whilst the learned counsel have not been able to adduce a single precedent, foreign or domestic, against us. When I speak of precedents, I do not allude to the obscure dicta which may be found by turning over the dark lantern of tradition in remote ages of antiquity, or to the interpolations which may be scattered through the marginal references to the abridgments, by unknown editors; but to some authoritative case which has occurred since the regular date of parliamentary impeachments. The fines which Edward I imposed on some of his judges, in what manner is not certainly known, to replenish, as many have supposed, an exhausted treasury, are familiar to every student. But from the period of impeachment to the present time, I believe no instance of an indictment can be shown against a judge of the Common Pleas, Exchequer, or King's Bench in England, nor against a Lord Keeper or Lord Chancellor, who hold their offices to this day, let it be remembered, during pleasure. The civil business of the Court of Chancery is more important than that of all the other courts, and the decisions of that tribunal have been as impartial I believe as any, notwithstanding the high sounding doctrines of judicial independence. There have been many impeachments, the judges have sometimes been complained of by information in the execrable Star Chamber, but there have been no indictments at law. The Star Chamber has been long since abolished, and the sole method of proceeding against judges of the superior court now is by impeachment. The best writers agree, "that judges of record are freed from all presentations whatever, except in Parliament, where they maybe punished for anything done by them in such courts as judges." Numerous authorities might be cited on this subject, but I shall content myself with barely referring to them.—1 Hawk., 192, chap. 73, sec. 6; 1 Salk., 396; Woodeson, 596; Jacob's Law Dictionary, title Judges, 12 Co., 25, 26.

Were I to rest the point here, I confidently believe we should be perfectly safe; but I will proceed further, agreeably to my engagement in the commencement of my argument, and demonstrate that, according to their own principles and authorities, Judge Chase has been guilty of crimes and misdemeanors, in the strictest technical sense of the terms, for which he ought to be punished in an exemplary manner.

In contesting the principles that no act is impeachable unless it also be indictable, I have not contended for the position attributed to me by the learned attorney-general of Maryland, that a judge may

be impeached for conduct which is not criminal. On the contrary, we rely on supporting this as a criminal proceeding, and the gentlemen are entitled to every advantage which they can reap from this declaration.

I have had occasion to state that I considered every act of misbehavior in a judge as a misdemeanor, and the attorney-general of Maryland has expressed in strong terms his perfect agreement in the opinion that misbehavior is synonymous with misdemeanor. He appeared to imagine that he gained a great advantage by making this concession, and I am content to give him the fall benefit to be derived from it. I shall not shrink from the position, but meet the gentleman with pleasure and confidence on this ground. I love to break, a lance in the open field of discussion, and disdain every kind of ambush in argument.

As we agree in one point, that misbehavior and misdemeanor are convertible terms, Jacob's Law Dictionary, which quotes the language of Judge Blackstone in his Commentaries, has been recurred to for a definition of a misdemeanor. Let us try the conduct Judge Chase by his text. "A crime or misdemeanor (says Judge Blackstone) is an act committed or omitted, in violation of a public law either forbidding or commanding it." "This general definition comprehends both crimes and misdemeanors, which properly speaking are mere synonymous terms."

There is a public law that prescribes the following oath which Judge Chase took on his entrance into office (1 vol., p. 53): "I do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and the rich, and that I will faithfully and impartially perform all the duties incumbent on me as a judge of the Supreme Court according to the best of my abilities and understanding, agreeably to the Constitution and laws of the United States."

Who that reads this solemn and impressive provision, and looks at the plenary evidence we have before us, can hesitate to pronounce the respondent guilty of violating a public law, which he was bound by the most sacred of all human obligation to execute with fidelity? His oath informed him that the law, like the gospel, was no respecter of persons, and yet what have we beheld in his conduct, when a poor unfortunate Fries or a wretched Callender was before him, upon a criminal charge? I appeal to the testimony which I shall by and by comment upon, whether his acts do not prove that he marked them out as victims to be sacrificed on the altar of party? Sir, I can not believe that gentlemen will seriously contend that the expressions "faithfully and impartially to perform his duties," have no definite meaning; that conduct grossly prejudiced, and the most shameless partiality shall be considered as no violations of his solemn oath. If they did, I have too exalted an opinion of the good sense and discernment of the court to believe they would countenance such an idea. Their import is certainly plain and obvious without recurring to the black-lettered lore for explanation. What then was the conduct of the respondent to Fries, if testimony not only unimpeached but unimpeachable is to be believed? Was he not prejudiced both against the unhappy prisoner and his case, which he had from a superabundance of zeal completely prejudged? Or, sir, when he declared Callender ought to be hung and set off with his miserable pamphlet in his pocket, ready scored for his purpose, and proceeded in the most arbitrary manner with his trial, was he impartial, or was he not guilty of the most manifest and daring partiality? Shall he be guilty of all these outrages against the plain language of a public statute, which combines the obligation of an oath with the sanction of a law, and yet be innocent of any crime or misdemeanor? If gentlemen will hold up the acts of Congress in one hand, and the acts of Judge Chase, proved by the testimony, in the other, they will see and be satisfied, that within the strictest legal definition he has been guilty of repeated and aggravated violations of public law, and therefore unquestionably of crimes and misdemeanors.

The Constitution, however, is declared to be emphatically the supreme law of the land. This sacred instrument he was bound by a twofold oath to preserve inviolate. All executive and judicial officers of the United States, independent of their oaths of office, are bound by oath to support the Constitution. (Art. 6, see. 3.)

By the seventh article of the amendments of the Constitution, which have been duly ratified and therefore now form part of that instrument, it is declared, that "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law; and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor and to have the assistance of counsel for his defense."

This article secures to every accused individual the right of a trial by an impartial jury. Without their unanimous consent, no matter how eager the Government are for conviction, no person can be punished. Where any man is charged in due form with the commission of a crime, and pleads he is not guilty, the jury are to decide on the whole case whether he be innocent or not. Their verdict must be commensurate with the issue joined, which involves both fact and law, which they have indubitably the right to decide, agreeably to the express and positive provision of the Constitution. This right, therefore, is an original right, flowing from the highest authority. It is beyond doubt a principle and not an incidental right. It is not a right incidental to the trial, but it constitutes the trial itself; for there can be no other trial in the case but by jury.

This same amendment guarantees to the accused the assistance of counsel. How important is this privilege, when it is recollected that veterans of the bar are generally selected to prosecute. The situation, too, of an innocent man, charged with the commission of a crime, is delicate and embarrassing. It excites frequently apprehensions which unfit him for making a defense. I feel myself compelled to declare, upon the authority of the testimony in this case, that the respondent has been proved guilty of violating the supreme law of the land in those great essential provisions. He has deprived accused individuals of a trial by jury, for he wound not suffer the jury to decide, or even to hear argument on the subject of the law, and he has deprived them of the benefit of counsel by conduct which drove counsel from the bar. This has happened in more than one instance, and above all, an injured fellow-citizen has been stripped of his invaluable privileges in a capital case. Is this imagination or is it reality? Let the recorded testimony determine. If, however, I am correct, must I not have satisfied this honorable court, agreeably to my promise that taking the learned counsel's own definition, and relying upon his authorities, I have demonstrated that the accused has been guilty of crimes and misdemeanors? But have I not gone further, and shown that he has been guilty of high crimes and misdemeanors, and such as disqualify him for a seat on the bench, so as to come fully within the rule which he has laid down?

God forbid that it should be said, when a judge is guilty of grossly violating not merely a public law, but the supreme law of the land, nay, a law which he was bound by two solemn oaths to support, he is not guilty of any crime or misdemeanor; or that when he violated this supreme law which he is thus obligated to respect, for the purpose of depriving a fellow-citizen, accused of a capital crime, of the benefit of counsel, and the inestimable right of trial by jury, he shall not be declared guilty of high crimes and misdemeanors, which evince a want of integrity, and mark a depravity of heart that completely disqualify him for a judicial office.

I have now finished my observations in reply to the preliminary objections which have been made to this mode of proceeding, and have been reluctantly compelled to discuss them at much greater length than I at first contemplated, from the zeal and pertinacity with which they have been urged and insisted on by the learned counsel opposed to us. Under the impression that I have been successful in this undertaking, I shall hasten to the investigation of the articles themselves.

2359. Chase's impeachment continued.

The argument of Mr. Manager Randolph on the nature of the power of impeachment.

And Mr. Manager Randolph said:

It has been contended that an offense, to be impeachable must be indictable. For what then, I pray you, was it that this provision of impeachment found its way into the Constitution? Could it not have said, at once, that any civil officer of the United States, convicted on an indictment, should (ipso facto) be removed from office? This would be coming at the thing by a short and obvious way. If the Constitution did not contemplate a distinction between an impeachable and an indictable offense, whence this cumbrous and expensive process, which has cost us so much labor, and so much anxiety to the nation? Whence this idle parade, this wanton waste of time and treasure, when the ready intervention of a court and jury alone was wanting to rectify the evil? In addition to the instances adduced by my right worthy friend (Mr. Nicholson) who first addressed the court yesterday, permit me to cite a few others by way of illustration. The President of the United States has a qualified negative on all bills passed by the two Houses of Congress, that he may arrest the passage of a law framed in a moment of legistive delirium. Let us suppose it exercised, indiscriminately, on every act presented for his acceptance.

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[1] Annals, pp. 642, 643.

This surely would be an abuse of his constitutional power, richly deserving impeachment; and yet no man will pretend to say it is an indictable offense. The President is authorized by the Constitution to retain any bill presented for his approbation, not exceeding ten days, Sundays excepted, within which period he may return it to the House wherein it originated, stating his reasons for disapproving it. Now let us suppose that, at a session like the present, which must necessarily terminate on the third of March (and that day falls this year on a Sunday) the President should keep back until the last hour of an expiring Congress every bill offered to him for signature during the ten preceding days (and these are always the greater part of the laws passed at any session of the Legislature), and should then return them, stating his objections, whether good or bad is altogether immaterial. It is true that a vote of two-thirds of each branch may enact a law in despite of Executive opposition; but, in the case I have stated, it would be physically impossible for Congress to exercise its constitutional power. Indeed, over the bills presented to the President within nine days preceding its dissolution, the Legislature might be deprived of even the shadow of control, since the Executive is not bound to make any return of them whatever. Now, I ask whether such misconduct in the President be an indictable offense? And yet is there a man who hears me who will deny that it would be a flagrant abuse, under pretense of exercise of his constitutional authority, for which he ought to be impeached, removed, and disqualified? Sir, this doctrine, that impeachable and indictable are convertible terms, is almost too absurd for argument. Nothing but the high authority by which it is urged, and the dignified theater where it is advanced, could induce me to treat it seriously. Strip it of technical jargon, and what is it but a monstrous pretension that the officers of Government, so long as they steer clear of your penal statutes—so long as they keep without the letter of the law—may, to the whole length of the tether of the Constitution, abuse that power, which they are bound to exercise with a sound discretion and under a high responsibility for the general good? The counsel who closed the defense (Mr. Harper) felt that this ground trembled beneath his feet; and, fearing to be swallowed up in the yawning ruin, he precipitately abandoned it. He shifts from the position taken by his associates, and lays down this principle "that an offense, to be impeachable, need not be indictable, yet it must have been committed against some known law." Well, take the question in this point of view, and there is no longer matter of dispute between us; it is reduced to a miserable quibble. For what do we contend?—that the respondent has contravened the known law of the land and of his duty, which required him "to dispense justice faithfully and impartially, and without respect to persons." He stands charged with having sinned against this law and against his sacred oath, by acting in his judicial capacity unfaithfully, partially, and with respect to persons. These are our points. We do charge him with misdemeanor in office. Weaver that he hath demeaned himself amiss—partially, unfaithfully, unjustly, corruptly. This is the sum and substance of our accusation, and this we have established by undeniable proof. I will waste no more time in attempting to dislodge our opponents from a position which they have abandoned in the face of day.

2360. Chase's impeachment continued.

The counsel for Mr. Justice Chase argued elaborately that the power of impeachment applied only to indictable offenses.

Argument of Mr. Joseph Hopkinson, counsel for Mr. Justice Chase, on the nature of the power of impeachment.

On the other hand the counsel for the respondent argued at length that the power should be considered narrower.

Mr. Hopkinson said: [1]

In England the impeachment of a judge is a rare occurrence. I recollect but two in half a century. But, in our country, boasting of its superior purity and virtue, and declaiming ever against the vice, venality, and corruption of the Old World, seven judges have been prosecuted criminally in about two years. A melancholy proof either of extreme and unequaled corruption in our judiciary, or of strange and persecuting times among us.

The first proper object of our inquiries in this case is, to ascertain with proper precision what acts or offenses of a public officer are the objects of impeachment? This question meets us at the very threshold of the case. If it shall appear that the charges exhibited in these articles of impeachment are not, even if

[1] Annals, pp. 356–364.

true, the constitutional subjects of impeachment; if it shall turn out on the investigation that the judge has really fallen into error, mistake, or indiscretion, yet if he stands acquitted in proof of any such acts as by the law of the land are impeachable offenses, he stands entitled to discharge on his trial. This proceeding by impeachment is a mode of trial created and defined by the Constitution of our country; and by this the court is exclusively bound. To the Constitution, then, we must exclusively look to discover what is or is not impeachable. We shall there find the whole proceeding distinctly marked out; and everything designated and properly distributed necessary in the construction of a court of criminal jurisdiction. We shall find (1) who shall originate or present an impeachment; (2) who shall try it; (3) for what offenses it may be used; (4) what is the punishment on conviction. The first of these points is provided for in the second section of the first article of the Constitution, where it is declared that "the House of Representatives shall have the sole power of impeachment." This power corresponds with that of a grand jury to find a presentment or indictment. In the third section of the same article the court is provided before whom the impeachment thus originated shall be tried: "The Senate shall have the sole power to try all impeachments." And the fourth section of the second article points out and describes the offenses intended to be impeachable, and the punishment which is to follow conviction, subject to a limitation in the third section of the first article.

Have any facts, then, been given in evidence against the respondent which makes him liable to be proceeded against by this high process of impeachment? What are the offenses? What is the constitutional description of those official acts for which a public officer may be arraigned before this high court? In the fourth section of the second article of the Constitution it is declared that "the President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors." Treason or bribery is not alleged against us on this occasion. Our offenses, then, must come under the general description of "high crimes and misdemeanors," or we are not impeachable by the Constitution of the United States. I offer it as a position I shall rely upon in my argument, that no judge can be impeached and removed from office for any act or offense for which he could not be indicted. It must be by law in indictable offense. One of the gentlemen, indeed, who conduct this prosecution (Mr. Campbell), contends for the reverse of this proposition, and holds that for such official acts as are the subject of impeachment no indictment will lie or can be maintained. For, says he, it would involve us in this monstrous oppression and absurdity, that a man might be twice punished for the same offense, once by impeachment and then by indictment. And so most surely he may; and the limitation of the punishment on impeachment takes away the injustice and oppression the gentleman dreads. A slight attention to the subject will show the fallacy of this gentleman's doctrine. If the absurdity and oppression he fears will really ensue on indicting a man for the same offense for which he has already been impeached, they must be charged to the Constitution itself, which, in the third section of the first article, after limiting the extent of the judgment in cases of impeachment, goes on to declare that "the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment according to law." The idea of the honorable manager is that for acts done in the course of official duty a judge must be proceeded against exclusively by impeachment; and that no indictment will lie in such case. The incorrectness of this notion appears not only from a reference to the Constitution, but to the known law of England also. I will remind you of a case, stated, I believe, in the elementary books of the law, in which it is said that if a judge undertakes, of his own authority, to change the mode of punishment prescribed by law for any crime, he is indictable; for instance, should he sentence a man to be beheaded when the law directed him to be hanged, the judge is guilty of murder, and may be accordingly indicted. When, sir, I contend, that, in order to sustain an impeachment, an offense must be proved upon the respondent which would support an indictment, I do not mean to be understood as admitting that the converse of the proposition is true—that is, that every act or offense which is impeachable is indictable. Far from it. A man may be indictable for many violations of positive law which evince no mala mens, no corrupt heart or intention, but which would not be the ground of an impeachment. I will instance the case of an assault, which is an indictable offense, but will not surely be pretended to be an impeachable offense, for which a judge may be removed from office. It is true that the second section of the first article, which gives the House of Representatives the sole power of impeachment, does not in terms limit the exercise of that power. But its obvious meaning is not, in that place, to describe the kind of acts which are to be subjects of impeachment, but merely to declare in what branch of the Government it shall commence. The House of Representatives has the power of impeachment; but for what they

are to impeach, in what cases they may exercise this delegated power, depends, on other parts of the Constitution, and not on their opinion, whim, or caprice. The whole system of impeachment must be taken together, and not in detached parts; and if we find one part of the Constitution declaring who shall commence an impeachment, we find other parts declaring who shall try it, and what acts and what persons are Constitutional subjects of this mode of trial. The power of impeachment is with the House of Representatives—but only for impeachable offenses. They are to proceed against the offense in this way when it is committed, but not to create the offense, and make any act criminal and impeachable at their will and pleasure. What is an offense, is a question to be decided by the Constitution and the law, not by the opinion of a single branch of the legislature; and when the offense thus described by the Constitution or the law has been committed, then, and not until then, has the House of Representatives power to impeach the offender. So a grand jury possesses the sole power to indict; but in the exercise of this power they are bound by positive law, and do not assume under this general power to make anything indictable which they might disapprove. If it were so, we should indeed have a strange, unsettled, and dangerous penal code. No Man could walk in safety, but would beat the mercy of the caprice of every grand jury that might be summoned, and that would be crime to-morrow which is innocent to-day.

What part of the Constitution then declares any of the acts charged and proved upon Judge Chase, even in the worst aspect, to be impeachable? He has not been guilty of bribery or corruption; he is not charged with them. Has he then been guilty of "other high crimes and misdemeanors?" In an instrument so sacred as the Constitution, I presume every word must have its full and fair meaning. It is not then only for crimes and misdemeanors that a judge is impeachable, but it must be for high crimes and misdemeanors. Although this qualifying adjective "high" immediately precedes and is directly attached to the word "crimes," yet, from the evident intention of the Constitution and upon a just grammatical construction, it must be also applied to "misdemeanors." The repetition of this adjective would have injured the harmony of the sentence without adding anything to its perspicuity. How would this be in common parlance? Suppose it should be said that at this trial there are attending many ladies and gentlemen. Would it be doubted that the adjective many applies to gentlemen as well as ladies, although not repeated? Or, if there is anything peculiar in this respect in this word "high," I will suppose it were said that among the auditors there are men of high rank and station. Would it not be as well understood as if it were said that men of high rank and station are here? There is surely no difference. So in the Constitution, it is said, that "a regular statement of the receipts and expenditures of all public money shall be published from time to time." Is not the account to be regular as well as the statement? I should have deemed it unnecessary to have spent a word on so plain a point, had I not understood that a difficulty would probably be made upon it. If my construction of this part of the Constitution be not admitted, and the adjective "high" be given exclusively to "crimes" and denied to "misdemeanors," this strange absurdity must ensue—that when an officer of the Government is impeached for a crime, he can not be convicted unless it proves to be a high crime; but he may nevertheless be convicted of a misdemeanor of the most petty grade. Observe, sir, the crimes with which these "other high crimes" are classed in the Constitution, and we may learn something of their character. They stand in connection with "bribery and corruption;" tried in the same manner and subject to the same penalties. But if we are to lose the force and meaning of the word "high" in relation to misdemeanors, and this description of offenses must be governed by the mere meaning of the term "misdemeanors," without deriving any grade from the adjective, still my position remains unimpaired, that the offense, whatever it is, which is the ground of impeachment, must be such a one as would support an indictment. "Misdemeanor" is a legal and technical term, well understood and defined in law; and in the construction of a legal instrument we must give to words their legal signification. A misdemeanor or a crime—for in their just and proper acceptation they are synonymous terms—is an act committed or omitted, in violation of a public law either forbidding or commanding it. By this test, let the conduct of the respondent be tried, and, by it, let him stand justified or condemned.

Does not, sir, the court, provided by the Constitution for the trial of an impeachment give us some idea of the grade of offenses intended for its jurisdiction? Look around you, sir, upon this awful tribunal of justice—is it not high and dignified, collecting within itself the justice and majesty of the American people? Was such a court created—does such a court sit—to scan and punish paltry errors and indiscretions, too insignificant to have a name in the penal code, too paltry for the notice of a court

of quarter sessions? This is indeed employing an elephant to remove an atom too minute for the grasp of an insect. Is the Senate of the United States solemnly convened and held together in the presence of the nation to fix a standard of politeness in a judge and mark the precincts of judicial decorum? The honorable gentleman who opened the prosecution (Mr. Randolph) has contended for a contrary doctrine, and held that many things are impeachable that are not indictable. To illustrate his position, he stated the cases of habitual drunkenness and profane swearing on the bench, which he held to be objects of impeachment and not of indictment. I do not desire to impose my opinions on this court as of any value. But surely I could not hesitate to say that both of the cases put by the gentleman would be indictable. Is there not known to us a class of offenses, not provided for indeed by the letter of any statute, but which come under the general protection which the law gives to virtue, decency, and morals in society? Any act which is contra bonos mores is indictable as such. And it is so, not by act of Congress, but by the pure and wholesome mandates of that common law which some men would madly drive from our jurisprudence, but which I most sincerely pray may live forever.

If I am correct in my position that nothing is impeachable that is not also indictable, for what acts then may a man be indicted? May it be on the mere caprice or opinion of any ten, twenty, or one hundred men in the community; or must it not be on some known law of the society in which he resides? It must unquestionably be for some offense, either of omission or commission, against some statute of the United States—or some statute of a particular State, or against the provision of the common law. Against which of these has the respondent offended? What law of any of the descriptions I have mentioned has he violated? By what is be to be judged, by what is he to be justified or condemned, if not by some known law of the country; and if no such law is brought upon his case—if no such violation rises on this day of trial in judgment against him—why stands he here at this bar as a criminal? Whom has he offended? The House of Representatives—and is he impeached for this?

I maintain as a most important and indispensable principle, that no man should be criminally accused, no man can be criminally condemned, but for the violation of some known law by which he was bound to govern himself. Nothing is so necessary to justice and to safety as that the criminal code should be certain and known. Let the judge, as well as the citizen, precisely know the path he is to walk in, and what he may or may not do. Let not the sword tremble over his unconscious head, or the ground be spread with quicksands and destruction which appear fair and harmless to the eye of the traveler. Can it be pretended there is one rule of justice for a judge and another for a private citizen; and that while the latter is protected from surprise, from the malice or caprice of any man or body of men, and can be brought into legal jeopardy only by the violation of laws before made known to him, the latter is to be exposed to punishment without knowing his offense, and the criminality or innocence of his conduct is to depend not upon the laws existing at the time, but upon the opinions of a body of men to be collected four or five years after the transaction? A judge may thus be impeached and removed from office for an act strictly legal, when done, if any House of Representatives for any indefinite time after, shall for any reason they may act upon, choose to consider such act improper and impeachable. The Constitution, sir, never intended to lay the Judiciary thus prostrate at the feet of the House of Representatives, the slaves of their will, the victims of their caprice. The Judiciary must be protected from prejudice and varying opinion, or it is not worth a farthing. Suppose a grand jury should make a presentment against a man, stating that most truly he had violated no law or committed any known offense; but he had violated their notions of common sense—for this was the standard of impeachment the gentleman who opened gave us—he had shocked their nerves or wounded their sensibility. Would such a presentment be received or listened to for a moment? No, sir; and on the same principle, no judge should be put in jeopardy because the common sense of one hundred and fifty men might approve what is thus condemned, and the rule of right, the objects of punishment or praise, would thus shift about from day to day. Are we to depend upon the House of Representatives for the innocence or criminality of our conduct? Can they create offenses at their will and pleasure, and declare that to be a crime in 1804 which was an indiscretion or pardonable error, or perhaps an approved proceeding, in 1800? If this gigantic House of Representatives, by the usual vote and the usual forms of legislation, were to direct that any act heretofore not forbidden by law should hereafter become penal, this declaration of their will would be a mere nullity; would have no force and effect, unless duly sanctioned by the Senate and the approbation of the President. Will they then be allowed, in the exercise of their power of impeachment, to create crimes and inflict the most serious penalties on actions never before suspected to be criminal when they could not have swelled the same act into an offense in the

form of a law? If this be truly the case, if this power of impeachment may be thus extended without limit or control, then indeed is every valuable liberty prostrated at the foot of this omnipotent House of Representatives; and may God preserve us! The President may approve and sign a law, or may make an appointment which to him may seem prudent and beneficial, and it may be the general, nay the universal, sentiment that it is so; and it is undeniable that no law is violated by the act. But some four or five years hence there comes a House of Representatives whose common sense is constructed on a new model, and who either are or affect to be greatly shocked at the atrocity of this act. The President is impeached. In vain he pleads the purity of his intention, the legality of his conduct, in vain he avers that he has violated no law and been guilty of no crime. He will be told, as Judge Chase now is, that the common sense of the House is the standard of guilt, and their opinion of the error of the act conclusive evidence of corruption. We have read, sir, in our younger days, and read with horror, of the Roman Emperor who placed his edicts so high in the air that the keenest eye could not decipher them, and yet severely punished any breach of them. But the power claimed by the House of Representatives to make anything criminal at their pleasure, at any period after its occurrence, is ten thousand times more dangerous, more tyrannical, more subversive of all liberty and safety. Shall I be called to heavy judgment now for an act which, when done, was forbidden by no law, and received no reproach, because in a course of years there is found a set of men whose common sense condemns the deed? The gentlemen have referred us to this standard, and, being under the necessity to acknowledge that the respondent has violated no law of the community, they would on this vague and dangerous ground accuse, try, and condemn him. The code of the Roman tyrant was fixed on the height of a column, where it might be understood with some extraordinary pains; but here, to be safe, we must be able to look into years to come, and to foresee what will be the changing opinions of men or points of decorum for years to come. The rule of our conduct, by which we are to be judged and condemned, lies buried in the bosom of futurity, and in the minds and opinions of men unknown, perhaps unborn.

The pure and upright administration of justice, sir, is of the utmost importance to any people; the other movements of Government are not of such universal concern. Who shall be President, or what treaties or general statutes shall be made, occupies the attention of a few busy politicians; but these things touch not, or but seldom, the private interests and happiness of the great mass of the community. But the settlement of private controversies, the administration of law between man and man, the distribution of justice and right to the citizen in his private business and concern, comes to every man's door, and is essential to every man's prosperity and happiness. Hence I consider the judiciary of our country most important among the branches of Government, and its purity and independence of the most interesting consequence to every man. Whilst it is honorably and fully protected from the influence of favor or fear, from any quarter, the situation of a people can never be very uncomfortable or unsafe. But if a judge is forever to be exposed to prosecutions and impeachments for his official conduct, on the mere suggestions of caprice, and to be condemned by the mere voice of prejudice, under the specious name of common sense, can he hold that firm and steady hand his high functions required? No! if his nerves are of iron they must tremble in so perilous a situation.

In England the complete independence of the judiciary has been considered, and has been found the best and surest safeguard of true liberty, securing a government of known and uniform laws, acting alike upon every man. It has, however, been suggested by some of our newspaper politicians, perhaps from a higher source, that although this independent judiciary is very necessary in a monarchy to protect the people from the oppression of a court, yet that, in our republican institution, the same reasons for it do not exist; that it is indeed inconsistent with the nature of our Government that any part or branch of it should be independent of the people from whom the power is derived. And as the House of Representatives come most frequently from this great source of power, they claim the best right of knowing and expressing its will; and of course the right of a controlling influence over the other branches. My doctrine is precisely the reverse of this. If I were called upon to declare whether the independence of judges were more essentially important in a monarchy or a republic, I should certainly say, in the latter. All governments require, in order to give them firmness, stability, and character, some permanent principle, some settled establishment. The want of this is the great deficiency in republican institutions. Nothing can be relied upon; no faith can be given either at home or abroad to a people whose systems and operations and policy are constantly changing with popular opinion. If, however, the judiciary is stable and independent; if the rule of justice between men rests upon known and permanent principles, it gives

a security and character to a country which is absolutely necessary in its intercourse with the world and in its own internal concerns. This independence is further requisite as a security from oppression. All history demonstrates, from page to page, that tyranny and oppression have not been confined to despotisms, but have been freely exercised in republics, both ancient and modern—with this difference, that in the latter, the oppression has sprung from the impulse of some sudden gust of passion or prejudice, while in the former it is systematically planned and pursued as an ingredient and principle of the government. The people destroy not deliberately, and will return to reflection and justice, if passion is not kept alive and excited by artful intrigue, but, while the fit is on, their devastation and cruelty are more terrible and unbounded than the most monstrous tyrant. It is for their own benefit and to protect them from the violence of their own passions that it is essential to have some firm, unshaken, independent branch of government, able and willing to resist their frenzy. If we have read of the death of a Seneca under the ferocity of a Nero, we have read too of the murder of a Socrates under the delusion of a republic. An independent and firm judiciary, protected and protecting by the laws, would have snatched the one from the fury of a despot and preserved the other from the madness of a people.

I have considered these observations on the necessary independence of the judiciary applicable and important to the case before this honorable court, to repel the wild idea that a judge may be impeached and removed from office although he has violated no law of the country, but merely on the vague and changing opinions of right and wrong—propriety and impropriety of demeanor. For if this is to be the tenure on which a judge holds his office and character; if by such a standard his judicial conduct is to be adjudged criminal or innocent, there is an end to the independence of our judiciary. In opposition to this reasoning I have heard (not from the honorable managers) a sort of jargon about the sovereignty of the people, and that nothing in a republic should be independent of them. No phrase in our language is more abused or more misunderstood. The just and legitimate sovereignty of a people is truly an awful object, full of power and commanding respect. It consists in a full acknowledgment that all power originally emanates in some way from them, and that all responsibility is finally in some way due to them; and whether this is acknowledged or not, they have, if driven to the last resort, a physical force, to make it so. But, sir, this sovereignty does not consist in a right to control or interfere with the regular and legal operations and functions of the different branches of the Government at the will and pleasure of the people. Having delegated their power; having distributed it for various purposes into various channels, and directed its course by certain limits, they have no right to impede it while it flows in its intended directions. Otherwise we have no Government. In like manner the officers of Government are responsible in certain modes, and at certain periods, for the exercise of their duties and powers; but the people have no right to make them accountable in any other manner, or at any other period than that prescribed by the great compact of Government or Constitution. Having parted with their power under certain regulations and restrictions, they are done with it. They are bound by their own act, and having retained and declared the manner in which they will correct abuses in office, they have no right to claim any other sort of responsibility. If this be not the case, what government have we? What rule of conduct? What system of association? None; but we are truly in a state of savage anarchy and ruthless confusion, with all the vices incident to civilization without the restraints to control them.

2361. Chase's impeachment continued.

Argument of Mr. Luther Martin, counsel for Mr. Justice Chase, on the nature of the power of impeachment.

Mr. Martin, counsel for the respondent, said:

We have been told by an honorable manager (Mr. Campbell) that the power of trying impeachments was lodged in the Senate with the most perfect propriety; for two reasons—the one, that the person impeached would be tried before those who had given their approbation to his appointment to office. This certainly was not the reason by which the framers of the Constitution were influenced when they gave this power to the Senate. Who are the officers liable to impeachment? The President, the Vice-President, and all civil officers of Government. In the election of the two first the Senate have no control, either as to nomination or approbation. As to other civil officers who hold their appointments during good behavior, it is extremely probable that, though they were approved by one

[1] Annals, pp. 429–437.

Senate, yet from lapse of time and the fluctuations of that body an officer may be impeached before a Senate not one of whom had sanctioned his appointment, not one of whom, perhaps, had he been nominated after their election would have given him their sanction.

This, then, could not have been one of the reasons for thus placing the power over these officers. But as a second reason he assigned that, if any other inferior tribunal had been intrusted with the trial of impeachments, the members might have an interest in the conviction of an officer, thereby to have him removed in order to obtain his place; but that no Senator could have such inducement. I, sir, disclaim—I hold in contempt the idea—that the members of any tribunal would be influenced in their decision by so unworthy, so base a motive; but what is there to prevent this Senate more than any other court from being influenced? Is there anything to prevent any Member of this Senate or any of their friends from being appointed to the office of any person removed by their conviction?

I speak not from any apprehension I have of this honorable Court. In their integrity I have the greatest confidence. I have the greatest confidence they will discharge their duty to my honorable client with uprightness and impartiality. I have only made these observations to show that the reasons assigned by the honorable manager for vesting the trials of impeachment in the Senate are fallacious.

I see two honorable Members of this court [Messrs. Dayton and Baldwin] who were with me in convention, in 1787, who as well as myself perfectly know why this power was invested in the Senate. It was because, among all our speculative systems, it was thought this power could nowhere be more properly placed or where it would be less likely to be abused. A sentiment, sir, in which I perfectly concurred, and I have no doubt but the event of this trial will show that we could not have better disposed of that power.

Let us now, sir, examine the Constitution on the subject of impeachments, and from thence learn in what cases, and in what only, impeachments will lie. To have correct sentiments on this subject is of infinite importance. An error here would be like what is called an error in the first concoction, and would pervade the whole system.

By the Constitution it is declared that "the House of Representatives shall have the sole power of impeachment." That section, however, does not declare in what cases the power shall be exercised. This is designated in a subsequent part of the Constitution, and I shall contend that the power of impeachment is confined to the persons mentioned in the Constitution, namely, "the President, Vice President, and all other civil officers."

Will it be pretended, for I have heard such a suggestion, that the House of Representatives have a right to impeach every citizen indiscriminately? For what shall they impeach them? For any criminal act? Is the House of Representatives, then, to constitute a grand jury to receive information of a criminal nature against all our citizens and thereby to deprive them of a trial by jury? This was never intended by the Constitution?

The President, Vice-President, and other civil officers can only be impeached. They only in that case are deprived of a trial by jury; they, when they accept their offices, accept them on those terms, and, as far as relates to the tenure of their offices, relinquish that privilege; they, therefore, can not complain. Here, it appears to me, the framers of the Constitution have so expressed themselves as to leave not a single doubt on this subject.

In the first article, section the third, of the Constitution it is declared that judgment in all cases of impeachment shall not extend further than removal from office and disqualification to hold any office of honor, trust, or profit under the United States. This clearly evinces that no persons but those who hold offices are liable to impeachment. They are to lose their offices; and, having misbehaved themselves in such manner as to lose their offices, are with propriety to be rendered ineligible thereafter.

The next question of importance is in what cases the House of Representatives have a right to impeach the President, the Vice-President, and the other civil officers.

It has been said that a judge can not be indicted for the same crime for which he may be impeached, "for," says the honorable manager (Mr. Campbell), "it would introduce the absurdity that a person might be punished twice for the same crime."

This honorable Court will observe that the two punishments which may here be inflicted on impeachment and subsequent indictment amount to no more than in England takes place on a single prosecution; for there on a single conviction a judge may be removed from office and also fined, imprisoned, or otherwise punished according to the nature of his offense. But the whole of this power the United States have not vested in the same body. To the Senate they have confined the punish-

ment of removal from office, and disqualification of the person from holding offices in future; but can there be a single doubt that a person by impeachment removed from office can not afterward, according to the nature of his crime, be punished by indictment? Can gentlemen suppose a removal from office was intended to wash away all crimes the officer should have committed? What are the crimes for which an officer can be impeached? "Treason, bribery, and other high crimes and misdemeanors."

Suppose a judge removed from office by impeachment for treason. Would that wash away his guilt? Would he not afterwards be liable to be indicted, tried, and punished as a traitor. Undoubtedly he would; so in the case of bribery. Yet, if the gentleman's idea is correct, a removal from office on impeachment for either of those crimes would free the officer from any other punishment. Consider the monstrous consequences which would result from the principle suggested by the managers, that a judge is only removable from office on account of crimes committed by him as a judge, and not for those for which he would be punishable as a private individual! A judge, then, might break open his neighbor's house and steal his goods; he might be a common receiver of stolen goods; for these crimes he might be indicted, convicted, and punished in a court of law; but yet he could not be removed from office because the offense was not committed by him in his judicial capacity, and because he could not be punished twice for the same offense.

The truth is, the framers of the Constitution, for many reasons which influenced them, did not think proper to place the officers of Government in the power of the two branches of the Legislature further than the tenure of their office. Nor did they choose to permit the tenure of their offices to depend upon the passions or prejudices of jurors. The very clause in the Constitution of itself shows that it was intended the persons impeached and removed from office might still be indicted and punished for the same offense, else the provision would have been not only nugatory, but a reflection on the enlightened body who framed the Constitution; since no person ever could have dreamed that a conviction on impeachment and a removal from office, in consequence, for one offense, could prevent the same person from being indicted and punished for another and different offense.

I shall now proceed in the inquiry, For what can the President, Vice-President, or other civil officers, and, consequently, for what can a judge, be impeached? And I shall contend that it must be for an indictable offense. The words of the Constitution are, "that they shall be liable to impeachment for treason, bribery, or other high crimes and misdemeanors."

There can be no doubt but that treason and bribery are indictable offenses. We have only to inquire, then, what is meant by high crimes and misdemeanors? What is the true meaning of the word "crime?" It is the breach of some law which renders the person who violates it liable to punishment. There can be no crime committed where no such law is violated. The honorable gentleman to whom I before alluded has cited the new edition of Jacob's Law Dictionary; let us, then, look into that authority for the true meaning of the word "misdemeanor." He tells us—

"Misdemesnor, or misdemeanor, a crime less than felony. The term 'misdemeanor' is generally used in contradistinction to felony, and comprehends all indictable offenses which do not amount to felony, as perjury, libels, conspiracies, assaults," etc. (See 4 Comm. c. 1, p. 5.)

"A crime or misdemeanor, says Blackstone, is an act committed or omitted in violation of a public law either forbidding or commanding it. This general definition comprehends both crimes and misdemeanors which, properly speaking, are mere synonymous terms, though in common usage the word 'crimes' is made use of to denote such offenses as are of a deeper and more atrocious dye; while smaller faults and omissions of less consequence are comprised under the gentle name of misdemeanors only.

"In making the distinction between public wrongs and private, between crimes and misdemeanors, and civil injuries, the same author observes that public wrongs or crimes and misdemeanors are a breach and violation of the public rights and duties due to the whole community, considered as a community in its social aggregate capacity." (4 Comm., 5.)

Thus it appears crimes and misdemeanors are the violation of a law exposing the person to punishment, and are used in contradistinction to those breaches of law which are mere private injuries, and only entitle the injured to a civil remedy.

Blackstone's Commentaries, volume 4 page 5, is cited by Jacob, and is as there stated. I shall not turn to it. Hale, in his Pleas of the Crown, volume 1, in his Proemium, which is not paged, speaking of the division of crimes, says:

"Temporal crimes, which are offenses against the laws of this realm, whether the common law or acts of Parliament, are divided into two general ranks or distributions in respect to the punishments

that are by law appointed for them, or in respect to their nature or degree; and thus they may be divided into capital offenses, or offenses only criminal, or rather, and more properly, into felonies and misdemeanors. And the same distribution is to be made touching misdemeanors, namely, they are, such as are so by the common law, or such as are specially made punishable, as misdemeanors, by acts of Parliament."

Thus, then, it appears that crimes and misdemeanors are generally used as synonymous expressions, except that "crimes" is a word frequently used for higher offenses. But while I contend that a judge can not be impeached except for a crime or misdemeanor, I also contend that there are many crimes and misdemeanors for which a judge ought not to be impeached unless immediately relating to his judicial conduct. Let us suppose a judge provoked by insolence should strike a person; this certainly would be an indictable but not an impeachable offense. The offense for which a judge is liable to impeachment must not only be a crime or misdemeanor, but a high crime or misdemeanor. The word "crime," as distinguished from "misdemeanor," is applied to offenses of a more aggravated nature; the word "high," therefore, must certainly equally apply to misdemeanors as to crimes. Nay, sir, I am ready to go further and say there may be instances of very high crimes and misdemeanors for which an officer ought not to be impeached and removed from office; the crimes ought to be such as relate to his office, or which tend to cover the person who committed them with turpitude and infamy; such as show there can be no dependence on that integrity and honor which will secure the performance of his official duties.

But we have been told, and the authority of the State of Pennsylvania has been cited by one honorable manager (Mr. Rodney) in support of the position, that a judge may be impeached, convicted, and removed from office, for that which is not indictable, for that which is not a violation of any law.

What, sir! Can a judge be impeached and deprived of office when he has done nothing which the laws of his country prohibited? Is not deprivation of office a punishment? Can there be punishment inflicted where there is no crime? Suppose the House of Representatives to impeach for conduct not criminal; the Senate to convict, does that change the law? No, the law can only be changed by a bill brought forward by one House in a certain manner, assented to by the other, and approved by the President. Impeachment and conviction can not change the law and make that punishable which was not before criminal.

It is true it often happens that the good of the community requires that the laws should be passed making criminal and exposing to punishment conduct, which, antecedently, was not punishable; but even in those cases Government has no power to punish acts antecedently done; it can only punish those acts done after the enaction of the law. The Constitution has declared "no ex post facto law shall be passed."

Should such a principle be once admitted or adopted, could the officers of Government ever know how to proceed? Admit that the House of Representatives have a right to impeach for acts which are not contrary to law, and that thereon the Senate may convict and the officer be removed, you leave your judges and all your other officers at the mercy of the prevailing party. You will place them much in the unhappy situation as were the people of England during the contest between the white and red roses, while the doctrine of constructive treasons prevailed. They must be the tools or the victims of the victorious party.

I speak not, sir, with a view to censure the principles or the conduct of any party which has prevailed in the United States since our Revolution, but I wish to bring home to your feelings what may happen at a future time. In republican governments there ever have been, there ever will be a conflict of parties. Must an officer, for instance a judge, ever be in favor of the ruling party whether wrong or right? Or, looking forward to the triumph of the minority, must he however improper their views act with them? Neither the one conduct nor the other is to be supposed but from a total dereliction of principle. Shall, then, a judge by honestly performing his duty and very possibly thereby offending both parties be made the victim of the one or the other, or perhaps of each, as they have power? No, sir: I conceive that a judge should always consider himself safe while he violates no law, while he conscientiously discharges his duty, whomever he may displease thereby.

But an honorable manager (Mr. Campbell) has read to us an authority to prove that a judge can not in England be proceeded against by indictment for violation of his official duties, but only in Parliament or by impeachment; his authority was the new edition of Jacob's Law Dictionary. Let me be indulged with reading to this honorable Court the case from 12 Coke, the case of Floyd and Barker

to which Jacob refers, and it will be found that the reasons there assigned, however correct they might be as to judges in England, can have no possible application to the judges of the United States.

[Here Mr. Martin read the following part of the third resolution, to wit:]

"It was resolved that the said Barker who was judge of assize, and gave judgment on the verdict upon the said W. P., and the sheriff who did execute him according to the said judgment, nor the justices of peace who did examine the offender, and the witnesses for proof of the murder before the judgment were not to be drawn in question, in the Star Chamber, for any conspiracy; nor any witness, nor any other person ought to be charged with conspiracy in the Star Chamber, or elsewhere, when the party indicted is convicted or attaint of murder or felony, and although the offender upon the indictment was acquitted, yet the judge, be he judge of assize, or a justice of peace, or any other judge, by commission and of record and sworn to do justice, can not be charged for conspiracy for that which he did openly in court as judge or justice of peace; and the law will not admit any proof against this vehement and violent presumption of law, that a justice sworn to do justice will do injustice, but if he hath conspired before out of court, this is extrajudicial, but due examination of causes out of the court, and inquiring by testimony and similar is not any conspiracy, for this he ought to do; but subornation of witnesses, and false and malicious prosecutors, out of court, to such whom he knows will be indictors, to find any guilty, etc., amounts to an unlawful conspiracy.

"And as a judge shall not be drawn in question in the cases aforesaid at the suit of the parties, no more shall he be charged in the said cases before any other judge at the suit of the King.

"And the reason and cause why a judge, for anything done by him as a judge, by the authority which the King (concerning his justice) shall not be drawn in question before any other judge, for any surmise of corruption, except before the King himself, is for this; the King himself is de jure to deliver justice to all his subjects; and for this, that he himself can not do it to all persons, he delegates his power to his judges, who have the custody and guard of the King's oath.

"And forasmuch as this concerns the honor and conscience of the King, there is great reason that the King himself shall take account of it, and no other."

But even in England it has been solemnly determined that judges may be proceeded against by indictment for the violation of the laws in their official conduct, for which I refer this honorable Court to Viner's abridgment, 14th volume, page 579, (F), pl. 3, and in notes, where he says:

"A justice can not rase a record, nor imbecile it, nor file an indictment which is not found, nor give judgment of death where the law does not give it, but if he doth this it is misprision, and he shall lose his office and shall make fine for misprision." (In the note "Brooke, Corone pl. 173 cities 2 R, 3, 9, 10, S. C. and P. and that he shall be indicted and arraigned.")

And that to Hawkin's Pleas of the Crown, volume 1, chapter 69, section 6, where that author tells us:

"It is said that at common law bribery in a judge, in relation to a cause depending before him, was looked upon as an offense of so heinous a nature that it was sometimes punished as high treason, before the 25th Edward III, and at this day it certainly is a very high offense and punishable not only with the forfeiture of the offender's office of justice, but also with fine and imprisonment," etc.

Mr. President, the principle I have endeavored to establish is that no judge or other officer can, under the Constitution of the United States, be removed from office but by impeachment, and for the violation of some law, which violation must be not simply a crime or misdemeanor, but a high crime or misdemeanor.

But an honorable manager (Mr. Rodney), who has this morning referred to some authorities as to other parts of the case has also contested the correctness of the foregoing principle, and has introduced the constitution of the State of Pennsylvania, by which he has told us a judge may, by the governor, be removed from office without the commission of any offense upon the vote of two-thirds of the two houses for his removal; notwithstanding that constitution has a similar provision for removal by impeachment as has the Constitution of the United States. To this I answer as we have no such provision in the Constitution of the United States the reverse is to be inferred, to wit, that the people of the United States from whom the Constitution emanated did not intend their judges should be removed, however obnoxious they might be to any part or to the whole of the Legislature, unless they were guilty of some high crime or misdemeanor, and then only by impeachment. It is also well known that the governor of Pennsylvania has not considered those words in the constitution of that State, "that he may remove the judges on such address," as being imperative. For, in a recent instance,

where he did receive such address, instead of admitting the construction to be as was contended, "you must," he determined it to be "I will not," and I have had the pleasure of seeing that judge some time since that transaction on the bench with his brethren dispensing justice. I again repeat that as the framers of the Constitution of the United States did not insert in their Constitution such a clause as is inserted in the constitution of Pennsylvania, it is the strongest proof that they did not mean a judge or other officer should be displaced by an address of any portion of the legislature, but only according to the constitutional provisions.

The same gentleman (Mr. Rodney) has told us that the tenure by which a judge holds his office is good behavior, therefore that he is removable for misbehavior; and, further, that misbehavior and misdemeanor are synonymous and coextensive. Here I perfectly agree with the honorable gentleman and join issue with him. Misbehavior and misdemeanor are words equally extensive and correlative; to misbehave or to misdemean is precisely the same; and as I have shown that to misdemean, or, in other words, to be guilty of a misdemeanor, is a violation of some law punishable, so, of course, misbehavior must be the violation of a similar law.

The same honorable gentleman has mentioned the impeachment and conviction of Judge Addison, and has told us that he was not impeached for the breach of any law, but only for rude or unpolite conduct to his brother judge; that this objection was made with much energy on his defense, but that the Senate were convinced by the great talents and eloquence of Mr. Dallas and some other gentlemen that the objection was groundless; they, therefore, convicted and removed him. I have not here the proceedings against Judge Addison and, therefore, it is possible that the senate of Pennsylvania erected themselves into a court of honor to punish what they might consider breaches of politeness; but does this honorable Court sit here to take its precedents from the State of Pennsylvania or any other State, however respectable? I should rather hope that this honorable Court should furnish precedents which might be respected and adopted by the different States. I would also ask, "When was that precedent established? Was it not at a time when there is too much reason to believe that the warmth and violence of party had more influence in it than justice; and that the senate of Pennsylvania overleaped their constitutional limits? But if we are to go to Pennsylvania for a precedent, why should we not be guided by that which the same State has so recently given us in a trial in which that gentleman bore so conspicuous a part? a precedent of acquittal; a precedent which we are perfectly willing should be adopted, and which we trust will be adopted on the present occasion.

My observations thus far have been principally with a view to establish the true construction of our Constitution, as relates to the doctrine of impeachment.

2362. Chase's impeachment, continued.

Argument of Mr. Robert G. Harper, counsel for Mr. Justice Chase, on the nature of the power of impeachment.

And finally, on behalf of the respondent, Mr. Harper said:[1]

The honorable managers, indeed, are as much at war with themselves on this point as with the Constitution and the laws. For when they have told us in one breath that this is merely a question of policy and expediency, they resort in the next to legal authorities, both English and American, for the purpose of explaining the doctrine of impeachment, and of proving that the acts alleged against the respondent amount to impeachable offenses; thus paying an involuntary homage to truth and furnishing an instance of the irresistible power with which she forces herself on the mind, even when most obstinately determined to resist her. Let us also, Mr. President, be permitted to adduce the authority of an elementary writer, of very high authority, on the laws of England in support of the principle for which we contend. Woodeson, in his Lectures, volume 2, page 611, treating on the law of impeachment, speaks thus: "As to the trial itself, it must of course vary in external ceremony, but differs not in essentials from criminal prosecutions before inferior courts. The same rules of evidence, the same legal notions of crimes and punishments, prevail. For impeachments are not formed to alter the law, but to carry it into more effectual execution, where it might be obstructed by the influence of too powerful delinquents, or not easily discerned in the ordinary course of jurisdiction, by reason of the peculiar quality of alleged crimes. The judgment therefore is to be such as is warranted by legal principles or

[1] Annals, pp. 505–514.

precedents. In capital cases the mere stated sentence is to be specifically pronounced." Thus far this learned professor and commentator of the laws of England; and he cites as authorities for this doctrine Selden and the State Trials; the latter of which, this honorable court need not be informed, is a collection of adjudged cases in the highest courts of England; and the former, a writer of great learning and very high authority, peculiarly tenacious of every principle tending to the security of public liberty, and not likely to mistake on a point so essential as the law of impeachment.

Thus we find that even in England, where the power of impeachment is subject to no express constitutional restrictions and where abuses of that power, for the purpose of party persecution and State policy, have sometimes been committed, and more frequently attempted, an impeachment has never been considered as a mere inquest of office, but always as a criminal prosecution, differing not in essentials from those which are carried on before the ordinary tribunals of justice and subject to the same rules of evidence, and the same legal maxims concerning crimes and punishments, as a proceeding contrived not to alter the law, but to carry it into more effectual execution. These authorities, sanctioned by the practice of one hundred and fifty years, prove the principle for which we contend. Instances may, no doubt, be found in the history of that country where these salutary principles have been disregarded and impeachments have been converted into engines of oppression. But this abuse does not destroy or impair the principle. That remains as eternal as the laws of reason and justice on which it is founded, while the abuse passes into oblivion with the temporary interests and fleeting projects which it was made to subserve, or remains in our recollection as a sad monument of the excesses into which frail man is hurried by his passions.

And has not this great principle of English jurisprudence, which in that country has weathered so many storms of faction, revolution, and civil war, received the sanction also of this honorable court? Has not testimony been rejected because it was judged illegal according to the ordinary rules of evidence? And how could those rules apply to this case unless it were considered as a criminal prosecution?

The Constitution of the United States will as little bear out the managers in their position as the laws of England. That Constitution gives the power of impeachment to the House of Representatives and to the Senate the power of trying impeachments. Had the authors of that instrument and those who adopted it intended to leave this power at large or to erect it into a general inquest for inquiring into the qualifications of judges and the expediency of removing them, nothing more would have been done than merely to give the power. But it will be found that various restrictions are imposed in the subsequent parts of the instrument, which prove that no person can be impeached except for an offense.

Thus, for instance, in speaking of the power of pardoning, the Constitution provides (art. 2, sec. 2) that "the President may grant reprieves and pardons for offenses against the United States, except in cases of impeachment." Is not this the same thing as saying that cases of impeachment are cases of offenses? What, Mr. President, are offenses in the language of the Constitution and the laws? For a definition of the term "offense," in a constitutional sense, we must consult our law books and not the caprice or the varying opinions of popular leaders or popular assemblies. Those books tell us that word "offense" means some violation of law. Whence it evidently follows that no officer of Government can be impeached unless he has committed some violation of the law, either statute or common. It is not necessary for me to contend that this offense must be an indictable offense. I might safely admit the contrary, though I do not admit it, and there are reasons which appear to be unanswerable in favor of the opinion that no offense is impeachable unless it be also the proper subject of an indictment. But it is not necessary to go so far, and I can suppose cases where a judge ought to be impeached for acts which I am not prepared to declare indictable. Suppose, for instance, that a judge should constantly omit to hold court, or should habitually attend so short a time each day as to render it impossible to dispatch the business. It might be doubted whether an indictment would lie for those acts of omission, although I am inclined to think that it would. But I have no hesitation in saying that a judge in such a case ought to be impeached. And this comes within the principle for which I contend, for these acts of culpable omission are a plain and direct violation of the law which commands him to hold courts a reasonable time for the dispatch of business, and of his oath which binds him to discharge faithfully and diligently the duties of his office.

The honorable gentlemen who opened the case on the part of the prosecution cited the case of habitual drunkenness and profane swearing on the part of a judge as an instance of an offense not indictable and yet punishable by impeachment. But I deny his position. Habitual drunkenness in a judge and profane swearing in any person are indictable offenses. And if they were not, still they are viola-

tions of the law. I do not mean to say that there is a statute against drunkenness and profane swearing. But they are offenses against good morals, and as such are forbidden by the common law. They are offenses in the sight of God and man, definitive in their nature, capable of precise proof and of a clear defense.

The honorable managers have cited a case decided in this court as an authority to prove that a man may be convicted on impeachment without having committed an offense. I mean the case of Judge Pickering. But that case does not support the position. The defendant there was charged with habitual drunkenness and gross misbehavior in court arising from this drunkenness. The defense set up was that the defendant was insane, and that the instances adduced of intoxication and improper behavior proceeded from his insanity. On this point there was a contrariety of evidence. It is not for me to inquire on which side the truth lay. But the court, by finding the defendant guilty, gave their sanction to the charge that his insanity proceeded from habitual drunkenness. This case therefore proves nothing further than that habitual drunkenness is an impeachable offense.

As little aid can the honorable gentlemen derive from the case of Judge Addison, on which also they have relied. The articles of impeachment will show that Judge Addison was not impeached, as the honorable gentlemen suppose, for rude and ungentleman-like behavior in court to one of his colleagues; but for a supposed usurpation of power in preventing his colleague, by an exertion of authority, from exercising the right which he was supposed to possess to charge a grand jury, and in exerting his official influence and power to prevent the jury from paying attention to the legal opinions expressed by his colleague in a civil case. The report of that trial, now in my hand, will attest the correctness of this statement and will show also that Judge Addison was so far from being charged with rude and ungentleman-like behavior to his colleague that the honorable gentleman himself towards whom that behavior is supposed to have been used and who gave evidence on the trial, bore testimony to the mildness and politeness of Judge Addison's manner on the occasions which furnished the grounds of impeachment. Whether the acts done by that learned and distinguished judge did amount to an usurpation of unconstitutional power, or whether his colleague did possess those rights in the exercise of which he was supposed to have been improperly restricted, are questions foreign from the present inquiry. But I am free to declare that if Judge Addison's colleague did possess those rights and if he did arbitrarily prevent and impede the exercise of them by an unconstitutional exertion of the powers of his office he was guilty of an offense for which he might properly be impeached, because he must in that case have acted in express violation of the Constitution and laws.

The great principle for which we contend, and which is so strongly supported by the clause of the Constitution already cited, that an impeachment is a criminal prosecution and can not be maintained without the proof of some offense against the laws, pervades all the other provisions of the Constitution on the subject of impeachment. The fourth section of the second article declares "that the President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors." This provision, I know has been considered by some as a mere direction of what shall be done in those specified cases, and not as a prohibition confining impeachment to those cases. But it must be recollected, Mr. President, that the Constitution is a limited grant of power, and that it is of the essence of such a grant to be construed strictly and to leave in the grantors all the powers not expressly or by necessary implication granted away. In this manner has the Constitution always been construed and understood; and although an amendment was made for the purpose of expressly declaring and asserting this principle, yet that amendment was always understood by those who adopted it and was represented by the eminent character who brought it forward as a mere declaration of a principle inherent in the Constitution which it was proper to make for the purpose of removing doubts and quieting apprehensions. When, therefore, the Constitution declares for what acts an officer shall be impeached, it gives power to impeach him for those acts and all power to impeach him for any other cause is withheld. The enumeration in the affirmative grant implies clearly a negative restriction as to all cases not enumerated. This provision of the Constitution, therefore, must be considered upon every sound principle of construction as a declaration that no impeachment shall lie except for a crime or misdemeanor; in other words, for a criminal violation of some law.

The same idea is found in the second section of the third article, third clause, where it is declared that "the trial of all crimes, except in cases of impeachment, shall be by jury;" plainly implying that cases of impeachment are cases of "trials for crimes."

It is material, also, Mr. President, to advert to the peculiar force of the term "conviction," which is employed in several parts of the Constitution, in application to cases of impeachment. The third section of the first article, sixth clause, speaking of the trial of impeachments, says: "And no person shall be convicted without the concurrence of two-thirds of the members present." The seventh clause of the same section, treating on the extent and operation of a judgment in impeachment, says: "But the party convicted shall nevertheless be liable and subject," etc. And the fourth section of the second article declares that certain officers "shall be removed from office on impeachment for, and conviction of, treason, bribery," etc. This term "conviction" has in our law a fixed and appropriate meaning. There is indeed no word in our legal vocabulary of more technical force. It always imports the decision of a competent tribunal pronouncing a person guilty of some specific offense for which he has been legally brought to trial. In an instrument so remarkable as the Constitution of the United States for technical accuracy in the use of terms the frequent and indeed constant use of this word is decisive to prove that in the intention of the framers of that instrument no man could be impeached except for some offense against law of which he might in legal language be said to be "convicted."

In fixing the construction of this instrument no safer guide can be followed than contemporaneous expositions furnished by those who made or ratified it; and among those expositions the most authoritative are to be found in the constitutions of the several States, formed about the same time, and drawn up in many instances by the same persons. Whenever it appears clearly from the context of these constitutions that they affix a certain meaning to particular terms we may safely infer that those or similar terms in the Constitution of the United States were intended to have the same meaning. And we shall find by inspecting the constitutions of the several States that impeachment has been considered by all of them as a criminal prosecution for the punishment of defined offenses against the laws.

Let us begin with that of Pennsylvania. In treating of impeachments, article the fourth, it speaks of conviction on impeachment, and declares that all civil officers shall be liable to impeachment for any misdemeanor in office. The term "misdemeanor" is of as accurate meaning and of as much technical force as any term in the law. It describes a class of offenses against law, as well defined as any in the criminal code. A still stronger argument is furnished by the second section of the fifth article, which provides that for any reasonable cause which shall not be sufficient ground of impeachment the governor may remove any of the judges on the address of two-thirds of each branch of the legislature. It is most manifest that this provision would have been wholly unnecessary had the people of Pennsylvania, in framing their constitution, considered impeachments, like the honorable managers, merely as inquests of office by which a judge might be removed for any cause which two-thirds of each branch might think reasonable. And the arguments derived from the constitution of Pennsylvania have more force, inasmuch as the terms "misdemeamor in office," used by it for describing impeachable acts, are much less strong than "treason, bribery, and other high crimes and misdemeanors," employed by the Constitution of the United States for the same purpose.

The constitution of Delaware, section 22, directs that impeachments shall lie against all persons "offending against the State, either by maladministration, corruption, or other means by which the safety of the State may be endangered." This is a very broad description of impeachable offenses against the laws, liable to punishment in the regular course of justice. It is declared that all impeachments shall be commenced "within eighteen months after the offense committed" and shall be prosecuted by the attorney-general or such other persons as the house of assembly shall appoint, according to the laws of the land. Persons found guilty on impeachment are to be disqualified, or removed, "or subjected to such pains and penalties as the laws shall direct." And the term "conviction," whose peculiar technical force has been already remarked, is applied by this constitution to cases of impeachment.

The people of Maryland did not think fit to invest the legislature with the power of impeachment, but have directed by their bill of rights, section 30, and by their constitution, section 40, that misbehavior in office shall be proceeded against by indictment in a court of law only, and that removal, and, fn some cases, disqualification, shall be the consequence of conviction. It will not be denied that "misdemeanor" and "misbehavior in office" are convertible terms. If there be any difference, the latter is the less strong; and yet the people of Maryland have declared that the term "misbehavior in office" means an indictable offense, of which a person may be convicted in a court of law.

The constitution of Virginia provides that persons offending against the State by maladministration, corruption, or other means by which the safety of the State may be endangered, "shall be impeach-

able by the house of delegates" in the general court, according to the laws of the land; "and that if all or any of the judges of the general court should, on grounds (to be judged by the house of delegates), be accused of any of the crimes or offenses above mentioned, such house of delegates may, in like manner, impeach the judge or judges so accused, to be tried in the court of appeals." Hence it appears most clearly that these general words "offending against the State by maladministration, corruption, or other means by which the safety of the State may be endangered," words far more general and indefinite in themselves than those employed by the Federal Constitution, were considered by the people of Virginia as meaning specific crimes or offenses, which might be proceeded against in a court of law according to the usual course of criminal justice. The words "any other means by which the safety of the State may be endangered" are certainly broad enough to embrace those reasons of political expediency and State policy for which the honorable managers contend that a judge may be removed by impeachment; but we find that the people of Virginia had no idea of giving them a construction so contrary to the notions entertained in this country respecting legal rights, personal safety, and constitutional liberty.

The provisions made on this subject by the constitution of North Carolina breathe the same spirit. That instrument declares, section 23, "that the governor and other officers offending against the State by violating any part of this constitution, maladministration, or corruption, may be prosecuted on the impeachment of the general assembly or presentment of the grand jury of any court of supreme jurisdiction in this State." This plainly implies that impeachable acts, though described in terms the most indefinite were neither more nor less than offenses indictable in the ordinary course of law.

In the constitution of South Carolina, article 5, we find the same idea necessarily implied. The words "misdemeanor in office" are used as the description of impeachable offenses; the term "conviction" is applied to impeachments, and it is provided that persons so convicted "shall, nevertheless, be liable to indictment, trial, judgment, and punishment, according to law." It is plain, therefore, that the words "misdemeanor in office," were understood and intended by the people of South Carolina to mean offenses against the laws for which the offender might be indicted and "convicted."

The constitution of Georgia contains no words which can operate in any manner to define or describe impeachable offenses. It merely directs who shall have the power of impeaching, who shall try impeachments, and what description of persons may be impeached. But in that of Vermont there is a provision on this subject, which, though very concise, is very strong to our present purpose. Among the powers given by it, section 9, to the house of representatives is that to "impeach State criminals." This term "criminals," which in our laws is never applied except to persons charged with offenses of the highest nature, sufficiently declares that the people of Vermont considered impeachments as applicable to cases of crimes only, and not to removals for reasons of State expediency; not even to cases of smaller offenses, much less of indiscretion or impropriety of behavior, such as is alleged against the respondent in this case. For surely it would be an abuse of language to apply the term "criminal" to improper interruptions of the counsel, to rude, hasty or intemperate expressions; to ridicule employed by a judge against counsel who, in his opinion, conducted themselves incorrectly, or to the precipitate and ill-timed expression of a correct legal opinion. No, sir. This word imports the intentional violation of some known law, the perpetration of some specific defined crime, which may admit of precise proof, which every citizen may be able to avoid, against which, when accused of it, he may know how to make his defense.

Such, Mr. President, is the solemn exposition of impeachable offenses given by the people of the United States through the medium of their constitutions. Though not accustomed to talk about the will of the people, there is no man that bows with more reverence to that will when constitutionally declared. And shall we, Mr. President, let go this sheet-anchor of personal rights and political privileges to commit ourselves to the storms of party rage, personal animosity, and popular caprice? Shall we throw down this great landmark, fixed by the wisdom and patriotism of our fellow-citizens and fathers? Instead of having our best and dearest rights secured by fixed and known principles of law, shall we leave them to be governed and disposed by the ever varying whims and passions of the moment? No, sir, I trust not. When I look at these benches and recollect how deep a stake the members of this honorable court have in those rights which form the palladium of our safety and are now intrusted to their care and keeping, I can not but confidently expect that they will feel the whole importance of the great trust reposed in them by their country; that they will regard themselves as acting for future generations, as well as for the present age; and will elevate themselves above the sphere of little views and momentary feelings. They will recollect, sir, that unjust principles, adopted to answer particular purposes,

are two-edged swords, which often rebound on the head of him who strikes with them, and that justice, though it may be an inconvenient restraint on our power while we are strong, is the only rampart behind which we can find protection when we become weak. They will remember that power which depends on popular favor is of all sublunary things the most fleeting and transient; that it must, from time to time, change hands; and that when the change which sooner or later must arrive shall have taken place, when those who now direct the thunder of impeachment shall be placed, as ere long they must be, in a situation to be smitten by its bolts, they will be glad to invoke, and unless they now set a great example of correct decision, will invoke in vain those constitutional privileges to which we now cry for safety.

Need I, Mr. President, urge the necessity of adhering to those principles, as it respects the independence of the judiciary department? Need I enlarge on the essential importance of that independence to the security of personal rights, and to the well-being, nay, to the existence of a free government? These considerations of themselves strike the mind with a force not to be increased by any efforts of mine. It is sufficient merely to bring them into the view of this honorable court.

But it is not to the party accused, to the nation, to posterity, and to the interests of free governments that the observance of settled constitutional principles in cases of impeachment is alone important. It is equally so to the character and feelings of those appointed to judge. Is there any member of this honorable court who would wish, nay, who would consent, in deciding this cause, to be set free from the restraints of the law, or, more properly speaking, to be deprived of its guidance and left to the influence of his own passions, feelings, or prepossessions? Were causes like this to be determined on expediency, and not on fixed principles of law, to what suspicions might not the judges be liable, of having sought the indulgence of some animosity, or the attainment of some selfish end, instead of consulting for the public good? But when they are known to be governed by the settled rules of law, and are considered as merely its organs, their motives will be more respected, and their conduct less liable to suspicion or reproach. Is any member of this honorable body prepared to relinquish the high and venerable station of the organ and expounder of the law, in order to assume the doubtful and dangerous character of a judge, subject to no rule but his own arbitrary will?

To a judge, too, it is the sweetest consolation in the discharge of his painful duties that when he has doomed a fellow-citizen to dishonor and misery, he has merely pronounced the decision of the law, and not the dictates of his own will; that he is not the author of the sentence by which so much calamity is brought on others, but merely its official organ. This reflection soothes his mind under the anguish which it must feel from another's woe. And is there any member of this honorable court who would consent to relinquish this consolation? I boldly say, no. I feel that every heart will respond to the assertion. And if any who hear me be capable of entertaining a contrary opinion, or would wish, in the same situation, to hold a different conduct, I envy not their feelings, however highly I may estimate their intellectual powers.

In every light, therefore, in which this great principle can be viewed, whether as a well-established doctrine of the Constitution; as the bulwark of personal safety and judicial independence; as a shield for the characters of those whose lot it may be to sit under the trial of impeachments; or as a solace to them under the necessity of pronouncing a fellow-citizen guilty; it will equally claim, and I can not doubt that it will receive the sanction of this honorable court, by whose decision it will, I trust, be established so as never hereafter to be brought into question, that an impeachment is not a mere inquiry, in the nature of an inquest of office, whether an officer be qualified for his place, or whether some reason of policy or expediency may not demand his removal, but a criminal prosecution, for the support of which the proof of some willful violation of a known law of the land is known to be indispensably required.

2363. Chase's impeachment, continued.

At the conclusion of the final arguments in the Chase trial, the court set a day and hour for giving final judgment.

It does not appear surely that the House attended on the final judgment in the Chase impeachment.

In the Chase trial the court modified its former rule as to form of final question.

Two-thirds not having voted guilty on any article, the Presiding Officer declared Mr. Justice Chase acquitted.

As soon as the arguments were concluded, on February 27,[1] it was, on motion of Mr. James Jackson, of Georgia, a Senator—

Resolved, That the court will on Friday next, at 12 o'clock, pronounce judgment in the case of Samuel Chase, one of the associate justices of the Supreme Court of the United States.

On Friday, March 1,[2] the court being opened by proclamation, the managers, accompanied by the House of Representatives, attended.[3]

The counsel for the respondent also attended.

The consideration of the motion, made yesterday for an alteration of one of the rules in cases of impeachments, was resumed; whereupon,

Resolved, That in taking the judgment of the Senate upon the articles of impeachment now depending against Samuel Chase, esq., the President of the Senate shall call on each Member by his name, and upon each article, propose the following question, in the manner following: "Mr. ———, how say you; is the respondent, Samuel Chase, guilty or not guilty of a high crime or misdemeanor, as charged in the ——— article of impeachment?"

Whereupon, each Member shall rise in his place, and answer guilty or not guilty.

The President rose, and addressing himself to the members of the court, said:

Gentlemen: You have heard the evidence and arguments adduced on the trial of Samuel Chase, impeached for high crimes and misdemeanors. You will now proceed to pronounce distinctly your judgment on each article.

The Secretary then read the first article of impeachment.

The article having been read, the President took the opinion of the members of the court respectively, in the form following:

Mr. ———, how say you; is the respondent, Samuel Chase, guilty or not guilty of a high crime or misdemeanor, as charged in the first article of impeachment?

And thus, after the reading of each article, the opinion of the court was taken.

At the conclusion, the President rose and said: On the first article, sixteen gentlemen have pronounced guilty and eighteen not guilty; on the second article, ten have said guilty and twenty-four not guilty; on the third article, eighteen have said guilty and sixteen not guilty; on the fourth article, eighteen have said guilty and sixteen not guilty; on the fifth article, there is an unanimous vote of not guilty; on the sixth article, four have said guilty and thirty not guilty; on the seventh article, ten have said guilty and twenty-four not guilty; and on the eighth article, nineteen have said guilty and fifteen not guilty.

Hence, it appears that there is not a constitutional majority of votes finding Samuel Chase, esq., guilty on any one article. It, therefore, becomes my duty to declare that Samuel Chase, esq., stands acquitted of all the articles exhibited by the House of Representatives against him.

Whereupon, the court adjourned without day.

It does not appear, from the House Journal,[4] that the decision was communicated to the House; and there is no record in the House Journal that the House attended either as Committee of the Whole House or otherwise.

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[1] Senate Impeachment Journal p. 523; Annals, p. 664.

[2] Journal, pp. 523–527; Annals, pp. 664–669.

[3] The House Journal raises a doubt as to whether or not the House as a Committee of the Whole attended. No mention of such attendance is made, after February 23 (Journal, pp. 149–162). It is probable that in the pressure of business, attendance as an organized body was omitted.

[4] House Journal pp. 157–162.